

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 BEATRIZ VEERMAN and
4 KHADIJETOU BA,

Plaintiffs,

5 v.

08 Cv. 5042 (LB)

6 DEEP BLUE GROUP, LLC.,
7 et al.,

8 Defendants.
9

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10 June 11, 2010
11 9:30 p.m.

12 Before:

13 HON. LARRY BURNS,

14 District Judge

15 APPEARANCES

16 GOLDBERG & FLIEGEL, LLP
17 Attorneys for Plaintiffs
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19 New York, New York
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24 MARTIN CRAUS, ESQ.,
Of counsel
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1 THE COURT: This is the matter of Veerman, et al,
2 versus Deep Blue Group, LLC, et al.

3 May I have appearances of the counsel for the record,
4 please.

5 MR. GOLDBERG: Kenneth Goldberg representing the
6 plaintiffs.

7 THE COURT: Good morning.

8 MS. FRIDEGOTTO: Good morning, your Honor. Linda
9 Fridegotto alley representing defendants.

10 THE COURT: Good morning.

11 The jury is not present. We have not selected a jury
12 yet.

13 The court has read and considered certain pretrial
14 motions filed on behalf of the parties. I have discussed court
15 procedures with the parties informally and prepared to hear
16 brief argument on the motions in limine and rule on those
17 before we summoned a jury and select a jury.

18 Ms. Goldberg, I am happy to hear from you.

19 MR. GOLDBERG: Thank you, your Honor.

20 On the plaintiffs' motion in limine, which was to
21 preclude the testimony of defendant witness John Liegey.

22 Mr. Liegey is a customer of Opia or was a customer.
23 He is not an employee or manager of the defendant. He, as a
24 customer, we say he's not at Opia often enough to be a relevant
25 fact witness.

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1 The defendants, I believe, will say he dated one or
2 more of the plaintiffs. My clients say that is not true. Even
3 if that was true, that would be some consensual relationship
4 that really wouldn't be part of the sexual harassment case
5 against Opia and co-owners.

6 Under Rule 412 of the Federal Rules of Evidence and a
7 case in the Second Circuit called Wolak, 217 F.3d 157, we
8 believe that any sexual behavior by my clients outside of work,
9 such as if they went on a date with somebody, would be under
10 that case law irrelevant and inadmissible.

11 I do not see the relevance of defendants calling
12 Mr. Liegey to testify. He might say I did not see any
13 wrongdoing at the workplace, they did not complain to me,
14 Mr. Liegey is not in the management chain and if he came to
15 Opia on a given day and didn't see something happening, that is
16 not relevant to prove there was unlawful conduct against my
17 clients.

18 We stand on our paper. I wanted to supplement it with
19 the cite and Wolak case.

20 THE COURT: Thank you.

21 Ms. Fridegotto.

22 MS. FRIDEGOTTO: An inherent part of plaintiffs'
23 claims against the defendants is the issue that they were
24 required by management to give their phone numbers to customers
25 and that this was a practice that was basically imposed upon

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1 them and that they were inherently forced to do this against
2 their will.

3 We believe that someone like Mr. Liegey, who both
4 plaintiffs in their previous testimony at depositions had
5 indicated was THERE very, very, very frequently and had been
6 there many, many times and to whom they had agreed had possible
7 consensual conduct with, such as frequenting him outside the
8 restaurant or going out and meeting him for drinks with friends
9 on other occasions, that kind of information, in our opinion,
10 is very relevant, because it goes to show that, you know, that
11 there was contact with the customers that was consensual and
12 that it was done regularly.

13 I mean, one of the plaintiffs met her fiancée at Opia.
14 He was a customer, too. It is inherent in everyday life that
15 we get to meet people, sometimes at work, sometimes not at
16 work, and we think that Mr. Liegey's testimony would basically
17 just indicate that he had interactions with the plaintiffs at
18 their place of employment, that these interactions were not
19 unwelcomed, that they actually became friendly and that he was
20 never in any way, shape or form forced by the managers --
21 sorry -- that there was -- the managers were not in any way, I
22 guess, involved in the creation, I guess, of this consensual
23 relationship or of this friendship.

24 THE COURT: As I understand it, you want to offer
25 Mr. Liegey to testify to the following:

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1 That he dated Ms. Veerman, is that right?

2 MS. FRIDEGOTTO: No, your Honor.

3 THE COURT: Okay.

4 MS. FRIDEGOTTO: That was what he had -- that is what
5 had been proffered in an affidavit that Mr. Liegey had given at
6 the EEOC stage.

7 There was a lot of information with regards to his
8 interactions with Veerman at Opia, his interactions with Ba at
9 Opia. That is the issue whether or not they would have
10 complained to him about the presence -- I'm sorry, your Honor,
11 these are my clients.

12 Your Honor, I want to introduce to you Antoine Blech
13 and Mr. Frederick Lesort.

14 THE COURT: Good morning, gentlemen.

15 I have the impression that Mr. Liegey's testimony, I
16 understand he's not available, right, it's going to be offered
17 by?

18 MS. FRIDEGOTTO: He actually most probably will be
19 available.

20 THE COURT: All right.

21 MS. FRIDEGOTTO: There had been some initial doubt at
22 the very beginning, your Honor, because of his schedule because
23 of his travel, previous travel commitments and because we
24 didn't realize what day we actually would be starting the
25 trial.

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1 THE COURT: I was led to believe that Mr. Liegey's
2 proffered testimony would be that he had dated Ms. Veerman and
3 according to him, at least, that they had been intimate, that
4 Ms. Ba had wanted to date him and tried to date him, that
5 neither plaintiff complained to them about the defendants and
6 he personally had not witnessed any unlawful conduct and that
7 he had a conversation at some point with Ms. Veerman in which
8 she said she wanted to sue Opia.

9 I thought those were the things that he was --

10 MS. FRIDEGOTTO: Those are some of the statements that
11 were made within the context of that affidavit, but those were
12 picked and chosen by plaintiff in his motion in limine to try
13 and, I guess, inflame the whole issue of -- John Liegey was a
14 customer at Opia and he was a very regular customer and he has
15 known both defendants for a very long time. He has frequented
16 this place since it opened and he had almost very frequent
17 contact also by the plaintiffs' own admission at the
18 restaurant. He had a relationship with one of them, according
19 to the statement that he made.

20 THE COURT: Mr. Goldberg, is this the plaintiffs'
21 intention to offer as part of the evidence of the hostile work
22 environment claim that they were forced to date customers
23 against their will or go out with customers against their will?

24 MR. GOLDBERG: It is their testimony that the owners
25 directed them to give their phone numbers to certain customers.

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1 Mr. Liegey is not one of those customers. There were a couple
2 of customers they were told give your number to that person.
3 Mr. Liegey is not included in that category.

4 THE COURT: Your point is that the plaintiffs on their
5 own gave their numbers to some customers? That is part of the
6 gist of what Mr. Liegey was saying?

7 MS. FRIDEGOTTO: Yes, your Honor. The fact that
8 plaintiffs could have chosen and were free to give their
9 numbers to whomever they wished.

10 THE COURT: And defendants deny the allegation that
11 they told plaintiffs they had to give their numbers to certain
12 customers?

13 MS. FRIDEGOTTO: Absolutely.

14 THE COURT: Okay.

15 Anything more?

16 (Pause)

17 The court is prepared to rule on the motion in limine.

18 I have a written order that forms the rulings. I will
19 just read it in the record and provide copies and file it told.

20 MR. GOLDBERG: I did have one comment on the
21 defendant's motion.

22 With respect to the issue of Mr. Blech's marital
23 status, your Honor, in going through the plaintiffs' Rule 56.1
24 summary judgment statement I saw that one of the incidents of
25 sexual harassment occurred when Mr. Blech hosted a birthday

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1 party for his wife at Opia and introduced his wife and children
2 in my client. And so, against, in talking about the incidents
3 of harassment, one of the incidents was at the wife's birthday
4 party. Add that to the issue of the marital status is just one
5 of the facts in this case.

6 THE COURT: I understand that Mr. Blech was married at
7 the time of these incidents and is no longer married and
8 separated?

9 MS. FRIDEGOTTO: He is very much married, your Honor.

10 THE COURT: Again, I don't know where I got that.

11 Let me make sure I understand what the dispute is
12 here. That the defendants don't want this marital status to
13 come in?

14 MS. FRIDEGOTTO: We don't believe it is relevant, your
15 Honor.

16 THE COURT: Well, okay. All right.

17 The court rules as follows.

18 In preparation for trial the parties filed motions in
19 limine seeking to admit and exclude certain evidence.

20 Defendants have asked the court to exclude testimony
21 concerning dating and allegedly sexual contact at Opia, the
22 restaurant where the plaintiffs' worked, and the sight of many
23 of the incidents that are at issue in this case.

24 The plaintiffs, in particular, seek to exclude
25 testimony from a long-time customer of Opia, Mr. John Liegey.

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1 Plaintiffs have brought their claims under several
2 different theories, but the deputed evidence primarily concern
3 claims that arise from alleged sexual harassment in violation
4 of Title VII, and the briefing shows that the plaintiffs are
5 primarily pursuing a hostile work environment theory.

6 For their part the defendants seek to exclude evidence
7 that includes dating and sexual conduct in a variety of
8 circumstances that involves different staff members.

9 At this point, having read the papers, the specifics
10 of much of the testimony are unclear. I have some of the
11 specifics in mind, but by no means do I have a full
12 understanding of what the specifics would be.

13 Some of the conduct it appears may have been welcomed
14 by staff members while other conduct certainly was not.
15 Plaintiffs say that they witnessed some of the conduct
16 personally, they heard about other conduct. The defendants
17 argue that the evidence is irrelevant or unduly prejudicial.

18 The court assesses a hostile work environment based on
19 the totality of circumstances. Instances of harassment that
20 are not directed at the plaintiff may be relevant to show the
21 overall work environment and if the plaintiff is emotionally
22 traumatized as a result of the workplace being permeated by
23 sexual discrimination then she can recovery. It is the ruling
24 in Leibovitz versus New York Transit Authority, 252 F.3d 179 at
25 185.

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1 However, harassment directed at others can contribute
2 to the establishment of a hostile work environment irrespective
3 whether the harassment is directed at the plaintiffs.

4 A title VII claim can't be based solely on incidents
5 that plaintiff has heard about, Leibovitz holds to that effect,
6 but evidence of other incidents can be relevant to show the
7 type of environment that plaintiffs were subjected to.

8 If the plaintiffs can show that they were affected by
9 the defendant's behavior in the restaurant during the relevant
10 period of time, then the evidence of that behavior would be
11 relevant. Evidence is not admissible to show, however, simply
12 that the defendants behaved similarly on other occasions.
13 That would be impermissible under Federal Rule of Evidence
14 404(b), nor is the evidence of behavior that had no effect
15 on the plaintiffs relevant.

16 Defendants have argued that evidence of their sexual
17 contact with staff is only relevant if the plaintiffs can show
18 it was nonconsensual or unwelcomed to other members of the
19 staff.

20 Plaintiffs have proffered some evidence that some of
21 the incidents respecting other staff members were unwelcomed.
22 However, the applicable test is not whether the other staff
23 members consented to or welcomed the defendants' advances, but
24 whether the defendant's behavior or the behavior they
25 encouraged was objectively offensive or created a hostile work

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1 environment for the plaintiffs.

2 A persistent and sexually-charged atmosphere even if
3 some of the instance were welcomed can provide support for a
4 the hostile work environment claim.

5 Here part of the plaintiffs' proffered testimony
6 consists of incidents other employees reported to them. The
7 defendants have objected to this evidence as hearsay and with
8 minimal exception the court agrees with the hearsay objection.

9 Proffered testimony does appear to me to be hearsay
10 not within any recognized exception, and is, thus,
11 inadmissible if offered to prove that the incidents actually
12 occurred. However, because the plaintiffs have to show they
13 were affected by the environment in which they worked, reports
14 of sexual incidents might be admissible to show the effects
15 that those incidents had on the plaintiffs. These reports,
16 however, are only relevant if the actual incidents occurred.
17 Plaintiffs, therefore, have to offer admissible non-hearsay
18 evidence to show that the incidents in question actually
19 happened. To the extent they are able to do so, then
20 plaintiffs may testify that they were told about the incidents.
21 The testimony cannot be used, however, to provide new
22 information or fill in details. To this limited extent the
23 plaintiffs' testimony about what other staff members told them
24 is excluded.

25 Defendants have offered Mr. Liegey, a long-time

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1 regular customer of the Opia bar and the plaintiffs seek to
2 exclude his testimony.

3 I have confirmed today that perhaps Mr. Liegey will
4 not testify to all the things that it appeared he was proffered
5 to testify in the papers.

6 Again, surprising, what the papers suggested
7 Mr. Liegey was being offered as a witness to testify that he
8 dated Ms. Veerman and that they had an intimate relationship,
9 testified that Ms. Ba had wanted to date him and had tried to
10 date him, that the plaintiffs didn't complain to him about the
11 defendants, that he didn't witness the unlawful conduct and a
12 at some point Ms. Veerman said she wanted to sue the restaurant
13 to get money.

14 Mr. Liegey's affidavit, which I've read, touched on a
15 few other issues, but these are the part of the testimony.

16 The court agrees with the plaintiffs that the evidence
17 proffered respecting Mr. Liegey is for the most part not
18 relevant and, therefore, must be excluded.

19 Plaintiffs' consensual conduct in other contexts is
20 not relevant to show that she was not subject to a hostile work
21 environment.

22 Whether Ms. Veerman welcomed the dating or intimate
23 relationship with Mr. Liegey really had no bearing whether they
24 are willing to date or have sexual contact with any men that
25 the defendants might send their way or whether the defendants'

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1 conduct in other respects created a hostile work environment.

2 In this respect, Ms. Fridegotto, I will permit you to
3 inquire of the plaintiffs whether they, generally speaking,
4 dated other men on their own inasmuch as that was part of their
5 claim they were forced to do that, you may certainly inquire
6 were there instances you met people at the bar and on your own
7 without impetus from the defendants went out with them and gave
8 the phone numbers. I think that is a fair reply to the
9 allegations so I will permit that.

10 In other respects that Mr. Liegey's testimony was
11 offered, he was a long-time customer at the bar. It is clear
12 to the court based on the affidavit that he was present at the
13 restaurant several days a week. He saw the plaintiffs
14 frequently, he saw other staff there frequently, was familiar
15 with them. But I agree with Mr. Goldberg that his not having
16 observed the alleged behavior is not probative of whether it
17 happened. There is no showing that the defendants were likely
18 to harass the plaintiffs or otherwise misbehaved in front of
19 Mr. Liegey or that plaintiffs would have probably complained to
20 him if they were mistreated.

21 In fact, to the contrary, Mr. Liegey's affidavit says
22 at one time Mr. Veerman mentioned having trouble with the
23 defendants and considered suing them and Mr. Liegey discouraged
24 her from that. This implies to the court that Ms. Veerman
25 realized that Mr. Liegey may not have welcomed her complaints

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1 about the defendants. So I don't make a lot out of that.

2 Ms. Veerman's remarks, alleged remarks to Mr. Liegey
3 about needing money and her plans to sue the defendants I
4 regard as unremarkable. While the affidavit couched in terms
5 as sort of hints at mendacity and extortion, there is nothing
6 in what Ms. Veerman reportedly said that unambiguously supports
7 these inferences. Almost everybody wants or needs money and
8 the fact that Ms. Veerman did at some point doesn't strike me
9 as relevant. So I do exclude that testimony.

10 Likewise, there is no need for testimony to establish
11 that Ms. Veerman planned to sue people that she thought injured
12 her and looking for monetary damages because a lawsuit itself
13 makes that utterly plain at this point.

14 Ms. Veerman's statement Mr. Liegey repeats that the
15 lawsuit would cause the defendants bad publicity I find to be
16 likewise irrelevant.

17 Accordingly, the court finds under 402 that all of
18 that proffered testimony of Mr. Liegey is not relevant and will
19 be excluded.

20 In sum, the defendants' motion in limine is granted in
21 part. Plaintiffs may only offer evidence of what other staff
22 told them if they offer evidence sufficient to support a
23 finding that the incidents that they were told about actually
24 occurred. The court will give appropriate limiting
25 instructions if such evidence is offered. The testimony of the

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1 incidents must be established through other evidence, not by
2 what plaintiffs were told. In all other respects, defendants'
3 motion in limine is denied.

4 Plaintiffs' motion in limine to exclude the testimony
5 of Mr. Liegey is granted.

6 Okay.

7 As I said, I intend to file this as a written order
8 and I enter the order without prejudice. Obviously, if
9 something different or unexpected comes out during the course
10 of the trial, either counsel can ask me to reconsider aspects
11 of the motion in limine, but you should be guided by that in
12 asking your questions in the first instance.

13 Any questions?

14 MS. FRIDEGOTTO: Not at this time, your Honor.

15 THE COURT: All right.

16 Are we ready?

17 I can bring the jury. We will briefly recess while
18 Mr. Lopez brings in our prospective jurors.

19 (Recess)

20 (Jury panel of prospective jurors was seated)

21 THE CLERK: In the matter of Beatriz Veerman against
22 Deep Blue Group, LLC, Opia, Frederick Lesort and Antoine Blech
23 for trial by jury.

24 Are the plaintiffs ready to proceed?

25 MR. GOLDBERG: Yes.

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1 THE CLERK: Are the defendants ready to proceed?

2 MS. FRIDEGOTTO: Yes.

3 THE CLERK: The Honorable Larry Burns presiding.

4 THE COURT: Ladies and gentlemen, good morning.

5 Welcome to the United States District Court for the
6 Southern District of New York.

7 We have summoned you here today in connection with a
8 civil case. I'm going to tell you a little bit about the case,
9 also tell you a little bit about our logistics here.

10 It is expected that this case is going to last about
11 four or five days. The parties have agreed to present their
12 cases respectively within ten hours per side. That is ten
13 hours of testimony and argument and opening statements and all
14 so that is everything.

15 We will take reasonable breaks, of course, that's why
16 I can't be entirely precise and give you exactly the time that
17 the case will be submitted to those of you who are selected to
18 hear it, but I think, my best estimate, is about four or five
19 days on this. It will obviously go over until next week.

20 Here is what this case is about:

21 The plaintiffs in the case are Beatriz Veerman and
22 Khadijetou Ba, these two young ladies to my left at counsel
23 table. They were servers at a restaurant called Opia, O-P-I-A.
24 That is in midtown, Manhattan, I'm told.

25 Opia is owned in part and managed by Mr. Frederick

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1 Lesort and Mr. Antoine Blech -- these are the two gentleman to
2 my right at the other counsel table -- through a company that
3 is called Deep Blue Group.

4 Ms. Veerman and Ms. Ba have brought these claims
5 against Opia, the restaurant, Deep Blue Group, the ownership
6 group, and Mr. Lesort and Mr. Blech relating to their former
7 employment at that restaurant, at Opia.

8 First, Ms. Veerman and Ms. Ba alleged they were
9 sexually harassed while they were employed at the restaurant
10 and that they were required to work in a sexually hostile work
11 environment. They allege that Mr. Lesort, Mr. Blech
12 participated in the harassment through verbal and fiscal sexual
13 harassment.

14 The defendants for their part deny these allegations.

15 Second, Ms. Veerman and Ms. Ba allege that Opia and
16 the Deep Blue Group, that is the ownership group, and
17 Mr. Lesort and Mr. Blech discriminated against them on the base
18 of race, color and national origin by giving them less
19 desirable work shifts. They also allege they were also
20 harassed and discriminated against and discharged from
21 employment based on their race and their color and national
22 origin.

23 Again, the defendants deny these allegations.

24 Third, Ms. Veerman and Ms. Ba allege that Opia and the
25 Deep Blue Group and Mr. Lesort, Mr. Blech unlawfully retaliated

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1 against them and terminated their employment after they
2 complained about the discrimination that they were
3 experiencing, and that Ba also claims that she was retaliated
4 against and discharged from employment after she opposed their
5 demand to pay an unpaid customer bill in violation of New York
6 State labor law.

7 Again, with respect to the allegations I just read
8 you, the defendants deny each and every one of those
9 allegations.

10 Finally, Ms. Veerman and Ms. Ba Opia, Deep Blue Group,
11 Mr. Lesort and Mr. Blech took away five percent of their tips
12 during the time that they were working at the restaurant. This
13 is also alleged to be a violation of New York State labor law.

14 And, again, with respect to these final allegations,
15 the defendants deny them.

16 We have summoned you here and we are having a trial
17 because obviously the parties disagree on what the evidence is
18 going to show and the statement I just read you sort of sums up
19 the disagreement.

20 We want to pick eight of you who have no
21 preconceptions at this point about what the outcome here should
22 be to hear the case and decide it, let the chips fall where
23 they will, let the evidence take you where it will. Toward
24 that end we are going to ask you some questions, get to know a
25 little bit about you.

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1 There are no right answers to these questions, there
2 are only honest ones.

3 I met with counsel beforehand and anticipated that
4 maybe some prospective jurors will say, no, I had an incident
5 that is just too close to that is being alleged, I don't think
6 I can fairly judge a case like that.

7 If you are in that category, then freely admit it. We
8 have lots of cases going out and I would send you back to the
9 jury administrator and have you sent on another case.

10 As a matter of fact, I recognize two of our
11 prospective juror today who have been here before on other
12 cases so I know there are cases going out every day.

13 Let me tell you the way the process works. I don't
14 know what you are used told.

15 How many have been through jury selection before,
16 either here or in the state court?

17 (Hands)

18 A lot of you.

19 Sometimes the process can be very tedious and long. I
20 vowed to myself many years ago that I would not participate in
21 those long processes again. It usually takes about an hour 15
22 minutes, an hour and 30 minutes to assemble a jury.

23 I have put together a questionnaire. All of you
24 should have a copy of that on your chairs. It is just general
25 questions.

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1 It is not my intent and it certainly is not the intent
2 of the parties to embarrass anybody. I suppose potentially
3 there are a couple of questions on there that might be
4 embarrassing and you may not want to answer in front of
5 everybody else. If that is the case let me know and I will ask
6 you answer in front of me and the lawyers at the bench.

7 But, again, I'm looking for broad strokes. If you
8 think there is anything that might cause you to tilt one way or
9 the other without hearing any evidence in this case, then that
10 is something we should know about and then the lawyers ought to
11 be able to assess.

12 There are two types of challenges to prospective
13 jurors on a case, one is called a challenge for cause.

14 If one of you says, for example, you know, I just went
15 through an employment situation like that myself this last
16 year, I'm an employer, I am an employee the same thing happened
17 and I just don't think I can be fair in a case like this, I
18 would excuse you for cause. As the name implies, there is
19 reason to excuse you from this case, you can't be fair.

20 The more familiar type of challenge is what is called
21 a peremptory challenge. The lawyers on both sides have three
22 of these and they can exclude up to six of you, three each
23 side, for any reason. They may not like the fact that you got
24 a green sweatshirt on today. They don't have to give me any
25 reason for those challenges, it's completely up to them.

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1 I have told jurors in the past and I will say this to
2 those of you assembled today as prospective jurors it really
3 says more about the lawyers than it does about you if you get
4 challenged on a peremptory basis.

5 I have been at this for a long time. I started when I
6 was a young man, 24 years old, trying cases. You know what my
7 rule of thumb was back then? No one younger than I on the
8 jury. That has changed over time, but no one younger than I.
9 What informed my thinking, well, older people made more
10 decisions, they made harder decisions, they got a greater stake
11 in the community.

12 That was what I was thinking when I was out picking a
13 jury. Did I excuse younger people who probably were just fine
14 and voted with me in my favor? Of course I did. Did it say
15 more about me than the people being excused? Of course it did.

16 So bear that in mind as we go through this process.
17 It's not personnel, it does really say more about what the
18 lawyers are thinking than about any attribute of any
19 prospective juror.

20 So that's what this case is about.

21 I promise you this, and two prospective jurors who
22 were here last time will probably say, well, I guess he means
23 what he says, we will make efficient use of your time.

24 We had a case that we started last week that was
25 supposed to last five days, started it Monday, and it was over

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1 by 2:00 o'clock yesterday.

2 I understand I'm not so far removed from being a
3 regular human being that I don't understand that all of you
4 have important things to do and that this is sort of crimping
5 your schedule. There are probably other places that you rather
6 be. I understand that.

7 This is important matter, though, to these parties.
8 They waited to have it resolved. They want eight conscientious
9 people to listen to the evidence and to give them a decision
10 over this dispute. In our country, we afford that. Our legal
11 system affords that. Any one of us would want to have the same
12 privilege if he were in either the plaintiffs' or defendants'
13 position.

14 We appreciate your being here. We will make efficient
15 use of your time. There are not going to be long periods
16 sitting around and talk to the lawyers. I met with them and
17 told them my protocol, which is to make hey when the sun
18 shines. When the jury is here we are going to be in session,
19 we are going to hear testimony. I will take up legal issues at
20 breaks.

21 I can't give you a precise time when this case will
22 end, but I do commit to you that we are mindful of the
23 sacrifice that you are making by being here.

24 BY THE COURT:

25 Q. All right. With those things said, Elizabeth Kelley,

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1 please stand and answer the questions on the sheet.

2 A. I live in Mamaroneck New York, which is in Westchester
3 County, and I've lived there for 40 years.

4 We own our home.

5 Actually, I've lived in Mamaroneck for 37 years and
6 New Rochell for three years before that.

7 We own our home.

8 I graduated high school, I didn't go on after that.

9 I am an executive assistant working for the CEO and
10 CFO of Eight O'clock Coffee Company, which also Teatley Tea --

11 Q. What kind of company?

12 A. Eight O'clock Coffee, and we also own Teatley Tea.

13 Q. Hold on a second. I want to follow along.

14 A. Yes, I am married and my husband is a sergeant in the
15 Mamaroneck police department.

16 Yes, I have a child. He is 22 years old. He has just
17 graduated from college and he is an emergency medical
18 technician at the moment working in the city.

19 I have not served as a juror before.

20 Cross-connection certainly would be my husband.

21 Q. Does he testify from time to time as a police officer?

22 Does he come to court and testify?

23 A. He has only been involved in relation to another question
24 in one particular case which was against police officers
25 internally in the police department, not involving him but as a

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1 sergeant of the department he was called in. That's the only
2 time.

3 Q. Was there a time earlier in his career when he was a patrol
4 officer and had to come to court and testify?

5 A. No.

6 Q. Okay.

7 A. I love to garden, I love to hike and I am a member of our
8 local citizens emergency response team as well as pet
9 sheltering in emergencies.

10 There is no reason why I can't serve fairly and
11 impartially.

12 Q. You heard the allegations that have been made in this case,
13 the allegations are denied and, as I said, there is going to be
14 a confrontation of evidence that we want you to resolve. Are
15 you up to the task here?

16 A. Absolutely.

17 Q. Nothing about this case that is troublesome to you at the
18 outset here such as you have a lack of confidence about ability
19 to render a fair and impartial decision?

20 A. Not at all.

21 Q. Thank you very much.

22 BY THE COURT:

23 Q. Mr. Jones, good morning.

24 A. Good morning.

25 I live in Mount Vernon, New York. I lived there for

,06BYVER1,

1 about 30 years. I rent my home.

2 I've gone through a year of college.

3 I'm staff administrator. I'm currently unemployed
4 right now.

5 I'm single. I have no children.

6 I've served as a juror before in a criminal case many
7 years ago.

8 Q. Did the jury reach a decision in that case?

9 A. Yes, they did.

10 I have a friend who is studying to be a lawyer.

11 Q. Is it a man or woman?

12 A. A man.

13 Q. Do you talk to him often about his studies?

14 A. Not really.

15 Q. Ever have a conversation about any of the areas of the law
16 that are implicated in this case?

17 A. Not that I can recall.

18 Q. Okay.

19 A. Have you had any friends in lawsuits?

20 I believe my niece is going through something right
21 now. She had a problem with her eyes and her doctor so they
22 are going through something. I don't know how far that is
23 going.

24 My free time I'm into music and bowling. And I don't
25 see any reason why I can't continue this.

,06BYVER1,

1 Q. Thank you, Mr. Jones. I appreciate your answers.

2 BY THE COURT:

3 Q. Mr. Lewyn, good morning again.

4 A. Good morning again, Judge.

5 Q. You are one of the guys that can verify what I said about
6 making efficient use of time. I bet you didn't think that case
7 would be over.

8 A. Actually, you said three or four days.

9 Q. Mr. Lewyn is a lawyer who is a prospective juror in the
10 other case.

11 Anyway, tell us about yourself.

12 A. I'm a senior litigation attorney with C&A, I have done
13 insurance defense work since 1980, live in Manhattan, married,
14 two children.

15 I think as I told you before, I might have -- I have
16 done insurance defense work since 1980, so I like to think I'm
17 fair as I told you before, but --

18 Q. Do you know these counsel at all?

19 A. I don't know who they are. They weren't introduced to us.

20 Q. Let me take a minute and do that. I apologize.

21 Mr. Goldberg, if you would like to stand and
22 reintroduce yourself to me and Mr. Margolis and introduce your
23 clients and tell the prospective jurors about yourself.

24 (Continue on next page)

25

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Jury Voir Dire

1 MR. GOLDBERG: Good morning.

2 My name is Kenneth Goldberg. I am an attorney. This
3 is Jonathan Margolis, an attorney at my office. These are my
4 clients Beatriz Veerman and Khadijetou Ba.

5 My office focuses on representing individuals in
6 employment discrimination cases. So that's typically what my
7 case load is, employees that a terminated and harassed.

8 Ms. Fridegotto, would you like to introduce yourself
9 to the jurors, your co-counsel and clients.

10 MS. FRIDEGOTTO: My name is Linda Fridegotto and I am
11 with the firm Havkins Rosenfeld Ritzert & Varriale. Seated
12 right here is Matthew Krauss. My two clients are Mr. Lesort
13 and Mr. Blech. My main area of expertise is litigation and
14 that's it. Thank you.

15 THE COURT: Do any of the perspective juror know Mr.
16 Goldberg or Ms. Fridegotto or any of the other folks that are
17 here today, the plaintiffs or the defendants? No one so
18 indicates.

19 Mr. Lewyn, I don't want to short circuit this but if
20 you feel based on what I've read that this is a case that might
21 challenge your ability to be fair and impartial --

22 THE JUROR: There's a concern, judge.

23 THE COURT: Okay. I don't want to put words in your
24 mouth. I know on the other case that you had the same concern.
25 On the other hand you know you are here and in your capacity as

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Jury Voir Dire

1 a private citizen I know as a lawyer you believe in the rule of
2 law and all the principles that I talk about with perspective
3 jurors. Could you put aside what you do for a living and put
4 on your citizen hat and listen to the case and fairly judge it?

5 THE JUROR: I guess my one concern is that I'd be
6 giving the defendant maybe a little fraction of a head start
7 since I've done this for a number of different carriers since
8 1998.

9 THE COURT: And you have had a lot of opportunity to
10 think about jury service and what kinds of cases you might be
11 called to serve on might be better to tell the jury
12 administrator to only send you out on criminal cases. If you
13 want me to have Mr. Lopez do that that will avoid this drill.

14 THE JUROR: I did intern years ago for the DA's
15 office.

16 THE COURT: What have they told but your term of
17 service? How long do you have to keep coming back before you
18 are finally excused if you don't get picked?

19 THE JUROR: I started on Monday. They indicate you
20 have an obligation up to two weeks. They did pass us for the
21 last couple days and then we were asked to return here so I
22 have no idea how long this is going to last.

23 THE COURT: Mr. Goldberg, Ms. Fridegotto, in light of
24 Mr. Lewyn's statements, I propose that we excuse him from this
25 case. He has doubts about his ability to be fair. Any

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Jury Voir Dire

1 objections to excusing Mr. Lewyn when for cause?

2 MR. GOLDBERG: No.

3 MS. FRIDEGOTTO: No.

4 THE COURT: We'll excuse you again.

5 Mr. Lopez, what I was going to ask you is rather than
6 have Mr. Lewyn brought up on cases where he labors in the same
7 vineyard, can you tell the jury administrator maybe he ought to
8 be called just if they have a criminal case, not that he wants
9 to, but call him on those and if he is to be called at all to
10 finish his commitment just on criminal cases.

11 COURTROOM DEPUTY: Yes, your Honor.

12 THE COURT: Mr. nice meeting you. Thank you again.

13 Mr. Zebatto, good morning. Tell us about yourself.

14 THE JUROR: I live in Manhattan. I own my apartment.
15 I have a two year degree from college.

16 I own a ladies apparent manufacturing company on
17 Seventh Avenue been doing that for 20 some odd years. I am
18 single.

19 I've never served as a juror.

20 I have friends that are lawyers but it wouldn't affect
21 this.

22 Let's see. Free time just with friends on the weekend
23 dinners and stuff like that.

24 And I feel I could make a fair judgment in this case

25 THE COURT: Okay. You've heard the allegations. The

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Jury Voir Dire

1 allegations are denied but nothing shocking, just at face value
2 to you or causing to you tilt just when you heard me read them
3 one way are the other?

4 THE JUROR: Not at all.

5 THE COURT: Okay. Thank you, Mr. Zebatto.

6 Mr. Docherty, good morning.

7 THE JUROR: Good morning.

8 I live in White Plains New York. I've lived there for
9 about 27 or 28 years. We own our own home.

10 I did graduate from law school.

11 I work for the Westchester County District Attorneys
12 and I have been there for about 27 or 28 years.

13 THE COURT: Are you a criminal prosecutor there?

14 THE JUROR: I am indeed. My wife is a human resources
15 executive.

16 I do have two children. They are both in college.

17 I have never served a juror before.

18 I have many friends who are attorneys or police
19 officers.

20 THE COURT: Judges I suppose too?

21 THE JUROR: Yes, and judges. I have been named as a
22 party in civil suits.

23 Until recently I was active in youth soccer. More
24 recently I play a little golf work around the house.

25 I don't think there's any reason that I couldn't serve

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Jury Voir Dire

1 fairly or impartially.

2 THE COURT: Okay. I spoke with Mr. Lewyn about the
3 different capacity in which you've served as a juror. You
4 fully appreciate that.

5 THE JUROR: I do.

6 THE COURT: You've been in the position of counsel
7 picking juries in undoubtedly?

8 THE JUROR: I have.

9 THE COURT: Thank you, Mr. Docherty, appreciate your
10 answers.

11 Oscar Navarrete.

12 THE JUROR: Good morning.

13 First time. I don't speak English almost, so I'll
14 try. I live in the Bronx. I rent.

15 I never go to school in this country.

16 I work in hotel. I cook on the -- La Meridian in
17 Manhattan.

18 I married. I got two kids.

19 I never serve in jury. That was my first time.
20 That's it.

21 THE COURT: So you don't know anybody in the criminal
22 justice system?

23 THE JUROR: No.

24 THE COURT: You've never been involved in a lawsuit as
25 a witness or defendant or a plaintiff?

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Jury Voir Dire

1 THE JUROR: No.

2 THE COURT: What about this case? Can you give a fair
3 judgment to this case if you are selected?

4 THE JUROR: I don't understand too many things cause
5 my English not so good for serving on the jury.

6 THE COURT: Okay. I am able to understand what you
7 are saying. Have you been able to follow what has been said
8 here or is some of it, have you been unable to comprehend some
9 of what's been said?

10 THE JUROR: No, I can't serve it.

11 THE COURT: Okay. You think that you don't speak
12 English or understand English well enough?

13 THE JUROR: I understand a little bit and I can talk a
14 little bit but not so much.

15 THE COURT: You think you'll have difficulty following
16 the testimony and the proceedings?

17 THE JUROR: Yes.

18 THE COURT: Counsel, I propose that we excuse Mr?
19 Navarrete, if there is not an any objection.

20 MR. GOLDBERG: No objection.

21 MS. FRIDEGOTTO: No objection.

22 THE COURT: All right. We're going to excuse you.

23 Jose, this another case where maybe the jury
24 administrator ought to talk to Mr. Navarrete if he feels
25 uncomfortable with his comprehension of English, then maybe we

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Jury Voir Dire

1 shouldn't keep him here.

2 COURTROOM DEPUTY: Okay.

3 THE COURT: Mr. Navarrete, I am going to excuse you.
4 If you go back to the jury room the clerk here is going to let
5 the jury administrator know, they'll talk to you a little bit
6 about whether you should be called out on other cases. If you
7 are not completely conversive with English then it is going to
8 be a problem in any case, so thank you.

9 THE JUROR: Okay. Thanks.

10 THE COURT: Mr. Montalio.

11 THE JUROR: I live in the south Bronx all my life. My
12 family owned their own home. I graduated four years in
13 college.

14 THE COURT: What was your degree in?

15 THE JUROR: Cooking.

16 THE COURT: Okay.

17 THE JUROR: I have no kids. Single. Never served on
18 a jury. Don't know nobody in the justice system. I play
19 baseball and I would serve jury.

20 THE COURT: Okay. What do you do for a living at the
21 present time?

22 THE JUROR: I am unemployed.

23 THE COURT: Your last job what were you doing?

24 THE JUROR: I was in school. I just graduated.

25 THE COURT: All right. When you last had a job when

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Jury Voir Dire

1 ever that was --

2 THE JUROR: I was an intern at a restaurant.

3 THE COURT: Have you ever been a party to a lawsuit of
4 any kind or been a witness or a plaintiff or a defendant in a
5 case?

6 THE JUROR: No.

7 THE COURT: Okay. How about contacts with the justice
8 system, lawyers or judges or anything? You heard me read what
9 the allegations are, what is at issue in this case. Plaintiffs
10 have made allegations. The defendants denied those. Can you
11 fairly judge a case that involves these issues?

12 THE JUROR: Yes.

13 THE COURT: Thank you. Appreciate your answers.
14 Ms. Breakenridge.

15 THE JUROR: I've lived in New Rochelle all my life.

16 THE COURT: Keep your voice up.

17 THE JUROR: I live in New Rochelle all my life. I
18 graduated from high school and I've done some college. Haven't
19 graduated yet.

20 Do for a living? Currently I am working for Cerebral
21 Palsy in Westchester.

22 THE COURT: What is the nature of your work for in
23 relation to cerebral palsy?

24 THE JUROR: I work with the mentally disabled, like I
25 help them, where they live I help them out with dressing and

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Jury Voir Dire

1 showering and stuff like that.

2 I am single. I have no children.

3 I have never served on a jury before. Yeah, I do have
4 a couple of, I do know a couple of people in the justice
5 system, know a couple of lawyers and judges.

6 THE COURT: You think your friendship or affiliation
7 with lawyers or judges would affect how you judge this case if
8 you were picked?

9 THE JUROR: No.

10 THE COURT: Okay.

11 THE JUROR: What do I do in my free time? I like to
12 sing. I love going to church, Internet and hang out with my
13 friends and that's about it.

14 THE COURT: They seem like pretty formal things for
15 somebody your age to be doing. You know you've heard that I
16 read off the allegations that the plaintiffs have made and I
17 told you that the defendants deny those allegations and you
18 heard me tell Ms. Kelly earlier that there's going to be a
19 confrontation of evidence here. There is a going to be a clash
20 of evidence and if you are picked you and other jurors are
21 going to have to listen and sort through it and decide which is
22 the truthful version and base a verdict on the truthful
23 version. Are you up to that task?

24 THE JUROR: Yes, I am.

25 THE COURT: That may involve listening to witnesses

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Jury Voir Dire

1 and saying, you know, I don't think that's the truth about what
2 and happened or, alternatively, you know that sounds truthful
3 to me. That sounds like the way things happen in everyday life
4 and I am going to credit that person's account. You are
5 probably going to have to make judgments like that in this
6 case. Can you do that?

7 THE JUROR: Yes, I can.

8 THE COURT: Okay Any reason can you think of where why
9 you wouldn't be completely fair in judging this particular
10 case?

11 THE JUROR: No.

12 THE COURT: All right. Thank you, Ms. Breakenridge.
13 Ms. Mapp.

14 THE JUROR: Good morning. I live in Manhattan and I
15 rent and I went to the 11th grade in school. I served as a
16 juror before.

17 THE COURT: How long ago was that?

18 THE JUROR: About nine years.

19 THE COURT: Okay. Criminal or civil case?

20 THE JUROR: Civil case. It was a hit and run also was
21 a -- for two days in that same case.

22 THE COURT: Did the jury reach a decision?

23 THE JUROR: Yes, we did.

24 THE COURT: Okay.

25 THE JUROR: I have three kids.

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Jury Voir Dire

1 And also work in the store shipping and receiving
2 department. I have been there 24 years.

3 THE COURT: What business is it?

4 THE JUROR: Shipping and receiving in a store,
5 Barney's New York.

6 THE COURT: Okay.

7 THE JUROR: That's about it. And in my free time I
8 like to go to the movies, to the casino.

9 THE COURT: Do they have casinos around here?

10 THE JUROR: No. Atlantic City.

11 THE COURT: What is your game of choice there?

12 THE JUROR: Slot machines.

13 THE COURT: Okay. You heard, as the others did, the
14 allegations that I read off, the allegations I hasten to add
15 the allegations are denied. That's why we've assembled in this
16 courtroom to have eight fair people listen to the whole case
17 and decide it. Are you up to that task?

18 THE JUROR: Yes, I am.

19 THE COURT: Anything about the nature of the case that
20 causes you to think I might not be completely fair, I might not
21 be able to assess both side's positions?

22 THE JUROR: No.

23 THE COURT: You find yourself tilting, leaning one way
24 or the other in this case at this point?

25 THE JUROR: No.

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Jury Voir Dire

1 THE COURT: Thank you, Ms. Mapp. Appreciate your
2 answers.

3 Ms. Gordon.

4 THE JUROR: I live in Westchester County Briar Cliff
5 Manor, the Rockefeller Preserve. I've lived there about 20
6 years. I rent.

7 Went three years in college.

8 I am a soap maker, I guess, for a living. Not a very
9 successful one but I am working on that. I work for myself.

10 I have a significant other who does computer repair
11 networking. I have no children.

12 I've never served a juror.

13 I don't have any close connections to the court.

14 My significant other went through a civil case or was
15 sued any way. When he was doing construction work the
16 construction site was damage and it was a lot of money lost.

17 THE COURT: It doesn't sound like that had anything to
18 do with the kinds of claims that are being made here,
19 completely different, right?

20 THE JUROR: Yeah.

21 THE COURT: Okay.

22 THE JUROR: Free time, I guess gardening. I am
23 interested in herbs and just learning about them.

24 To be honest, there may be a reason why I can't serve
25 fairly but I think I can. I mean I'll have to say I have been

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Jury Voir Dire

1 in a similar situation but --

2 THE COURT: To the plaintiffs?

3 THE JUROR: Yes.

4 THE COURT: Okay. So here is the question and it's
5 not disqualifying that you have had personal experiences that
6 maybe touches on some of the issues at all. We want people to
7 draw on their experience and common sense and all. The only
8 problem it would create is if you thought in your mind you'd
9 start drifting back to what happened to you and you would let
10 your own situation control the outcome here. That is, that you
11 wouldn't fairly listen to the evidence presented here and make
12 an independent judgment. Do you think --

13 THE JUROR: I think I could be fair but I thought I
14 should say my own experience.

15 THE COURT: Okay. But let me ask it differently. The
16 experience that you had was it recent or a long time ago?

17 THE JUROR: It was year ago but it's something that
18 happened and I thought I should be honest and say.

19 THE COURT: No, and as I said, there's no right
20 answers. There's just honest answers. I appreciate you
21 raising this. The concern I think that the lawyers would have
22 is, well, okay, is it something that the residue of it
23 continues on in your mind and you would --

24 THE JUROR: No, just something happened. It happens
25 in life, just deal with it and --

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Jury Voir Dire

1 THE COURT: Okay. You heard Mr. Lewyn, the lawyer,
2 who does defense work all the time saying, you know, I think
3 I'd naturally tilt toward the defendants. Do you have any
4 similar feeling that maybe because you have been in these shoes
5 that at some point you'd a tilt toward the plaintiffs
6 instinctively.

7 THE JUROR: No, but consciously I'd say no but I think
8 I should say honestly the experience I have had.

9 THE COURT: Okay. Here is what any judge will tell
10 you in handling a jury in any trial. What we try to find are
11 eight, ten, 12 people who can say, you know, I have had
12 experiences, maybe I have had experiences that touch on the
13 subject matter being tried but, judge, I feel pretty confident
14 that I can exercise the mental discipline to not let my own
15 experiences control the outcome of this case. I'll listen to
16 the evidence I'll make a judgment on the evidence. I'll,
17 certainly, be informed by my own experiences. You heard me say
18 earlier, you know, one of the questions about credibility is
19 that the way things really happen in life? I've got common
20 sense and experience. I am going to evaluate it that way. We
21 want you to use that experience. It's kind of a fine line
22 where you say, well, it happened to me so it happens this is
23 way all the time. We wouldn't want you to do that. We'd want
24 you to listen here, make an objective decision based on the
25 evidence that's presented here. Do you think you could do

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Jury Voir Dire

1 that?

2 THE JUROR: I think I could but I still wanted you to
3 know my experience.

4 THE COURT: No. I get it and I appreciate it. That's
5 just right that you would tell us about that. But I don't want
6 to put words in your mouth. What I hear you saying thought is
7 that you've thought this through. You are pretty confident
8 that you can judge this case on the facts that will be
9 presented here. Have I got it right?

10 THE JUROR: Yes.

11 THE COURT: Thank you very much.

12 Stephanie Feyne.

13 THE JUROR: Yes.

14 THE COURT: Good morning.

15 THE JUROR: Good morning. Okay. I live in Manhattan.
16 I have been here for 22 years. We own our home.

17 I am back in school getting a masters in linguistic
18 anthropology.

19 THE COURT: What does that concern?

20 THE JUROR: Exactly. It's language in context. I
21 work as a sign language interpreter so I am interested in how
22 all that comes together. I've been doing that for 32 years. I
23 have a part-time job with the Board of Ed. I also interpret
24 free-lance which includes medical, educational and also some
25 legal. Most of the interpreting I've done in the legal arena

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Jury Voir Dire

1 has been state and federal but criminal or family. I haven't
2 interpreted any civil.

3 THE COURT: Okay. So, this would be hearing impaired
4 people and you will sign the, okay, the proceedings?

5 THE JUROR: Um-hmm.

6 THE COURT: All right.

7 THE JUROR: My husband is a musician. We have no
8 children.

9 And the last time I was a juror was 35 years ago but
10 we did come to a verdict.

11 THE COURT: You must have been six years old.

12 THE JUROR: I love you.

13 THE COURT: Was the case at all similar to what is at
14 issue here?

15 THE JUROR: No. It was a paternity suit.

16 THE COURT: Okay. You heard me put the question to
17 one of the other perspective jurors about judging credibility.
18 In this case you should be prepared for an inevitable
19 confrontation of facts and sides and if you are selected and
20 seven others will have to sort through this, make sense of it
21 and say, here is what we believe the accurate version to be and
22 here is our verdict based on findings of fact. Can you do
23 that?

24 THE JUROR: Yes, sir.

25 THE COURT: It's not coincidental that the jury box is

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Jury Voir Dire

1 located very, very close to the witness stand. One of the
2 instructions I'll give you says, in judging credibility one of
3 the things that you should pay attention to is the manner in
4 which a person testifies, not just what they say but the manner
5 in which they testify. Often, I know this, you probably know
6 this from human experience that sometimes a no can mean yes.
7 I've raised two sons and I have had them shake their head no to
8 me and I knew that the answer was really yes. The same
9 phenomena occurs here in court. And you may know that from
10 your experiences as an interpreter watching somebody, watching
11 the manner looking for non verbal clues is a very big part of
12 judging and getting to proper judgments, correct judgments
13 about credibility. Are you up to that task if you are selected
14 here?

15 THE JUROR: Yes, sir.

16 THE COURT: Okay. Finally, let me put to you the
17 question that I've put to many others. You've heard the
18 allegations. The allegations are denied. Can you give both
19 parties here a fair trial, a level playing field?

20 THE JUROR: Yes.

21 THE COURT: OK. Thank you very much. Appreciate your
22 answers.

23 Ms. Reed.

24 THE JUROR: Yes.

25 THE COURT: Good morning.

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Jury Voir Dire

1 THE JUROR: Good morning. I live in the Bronx. My
2 husband and I have lived there for over 20 years. We rent. I
3 finished high school. I am attending art college at home. I
4 work for the police department as an administrative aid.

5 THE COURT: How long have you done that, Ms. Reed?

6 THE JUROR: 28 years.

7 THE COURT: Do your duties ever call on you to come to
8 court or to testify, anything like that?

9 THE JUROR: No.

10 THE COURT: Okay.

11 THE JUROR: I am married.

12 My spouse is retired. He used to work as a New York
13 City Housing maintenance man.

14 We have two children.

15 No, I have not served as a juror.

16 I don't have any close friends who are judges or
17 relatives lawyers or police officers.

18 My brother was in a lawsuit. He was hit by a car but
19 it's been settled.

20 THE COURT: Was that quite a while ago?

21 THE JUROR: Yes. It's been a long time.

22 THE COURT: Doesn't sound like that would influence
23 you in any way in this case.

24 THE JUROR: It would not.

25 I like to listen to music. I like to go by cycling.

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Jury Voir Dire

1 I like to read. I like to play sports, handball.

2 Organization, I attend church regularly.

3 And there is no reason why I can't make a fair
4 judgment on this case

5 THE COURT: Okay. You've heard particular questions
6 I've asked the other perspective jurors before you. The last
7 statement that you just made to me, no reason that you can't be
8 fair in this case, do you make that statement mindful of all
9 the questions I've put to others?

10 THE JUROR: Yes.

11 THE COURT: Okay. Thank you very much.

12 Neda Khatamee?

13 THE JUROR: Yes. I live in Manhattan. I have been
14 living here for about 14 years. I own my home.

15 I graduated law school. Practiced law for about five
16 years.

17 THE COURT: What was the nature of your practice,
18 Ms. Khatamee?

19 THE JUROR: Corporate.

20 THE COURT: Okay.

21 THE JUROR: What I do now, my present employer is a
22 Major Lindsey & Africa. We're legal recruiters. I have been
23 doing that for about five years with them.

24 I am single. I have no children.

25 I've never served on a jury.

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Jury Voir Dire

1 Most of my friends are lawyers.

2 THE COURT: Do you have lawyers that practice in the
3 specialty of our two counsel?

4 THE JUROR: Yes, friends. But I also work with
5 lawyers.

6 THE COURT: Okay. Do you think you would tilt one way
7 or the other or are you open?

8 THE JUROR: I am open.

9 THE COURT: Okay.

10 THE JUROR: I like playing golf. I go to the ballet
11 and opera.

12 THE COURT: Where is the closest golf course here.

13 Ladies and gentlemen, I guess I haven't mentioned this
14 to some of you. You may pick it up either from the way I speak
15 but I am not from here. I am a visiting judge from San Diego.
16 Land is at a premium it seems to me. Where is the closest golf
17 course?

18 THE JUROR: The winter times I go down to Florida and
19 in the summers I play up in the Berkshires usually.

20 THE COURT: Okay.

21 THE JUROR: And I believe I can serve fairly.

22 THE COURT: Okay. I put this question to the other
23 lawyers in the group. You are not here as a lawyer, of course,
24 or a legal recruiter. You are here as a citizen of the
25 Southern District of New York and they want you to judge this

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Jury Voir Dire

1 case with your citizen's hat on. It sounds like you are
2 prepared to do that.

3 THE JUROR: Yes.

4 THE COURT: Thank you. Appreciate your answers.

5 Good morning, Mr. We.

6 THE JUROR: I live in White Plains almost eight years.
7 I am ophthalmologist eye doctor. And my wife is office
8 manager. I have two kids, one boy and one girl.

9 THE COURT: Are they employed, your children? Are
10 they young or old enough to be employed?

11 THE JUROR: My boy is ophthalmologist too. And I
12 practice in Flushing and I am going to retire end of this year
13 and I am 68 years old.

14 THE COURT: Okay. Is your daughter employed also?

15 THE JUROR: Yes, designer.

16 THE COURT: Okay.

17 THE JUROR: My daughter.

18 THE COURT: Okay.

19 THE JUROR: I don't know any judge, anyone of these
20 people.

21 THE COURT: You know a lot of ophthalmologists I bet
22 but no, judges or lawyers.

23 THE JUROR: Yes. But my English is limited.

24 THE COURT: Okay. Have you been able to follow the
25 proceedings, follow what I've said so far?

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1 THE JUROR: My concern is I have two, my brain have a
2 surgery, my brain twice. And I take many medications and
3 include the Dilantin to control my seizure.

4 THE COURT: Okay.. Do you think that that would pose a
5 be problem for you sitting four or five days?

6 THE JUROR: I doubt because I can't control my emotion
7 and I tends to seizure.

8 THE COURT: Okay. Do you think there is anything
9 about being part of a trial that would bring that on or cause
10 that to be more frequent than normal?

11 THE JUROR: I don't know.

12 THE COURT: Let me ask you this, do you feel under
13 stress just from having to answer the questions or be a part of
14 this process?

15 THE JUROR: I think so.

16 THE COURT: All right. Well, maybe, Mr. Goldberg and
17 Ms. Fridge, it might be that rather than put Mr. Wu through
18 that, if you are in agreement, I propose that we excuse him for
19 cause. Is there any objection?

20 MR. GOLDBERG: No objection.

21 MS. FRIDEGOTTO: No objection, your Honor.

22 THE COURT: All right. Mr. Wu, I think rather than
23 test this given what you've told me that we'll excuse you from
24 jury service here.

25 THE JUROR: Thank you.

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1 THE COURT: You can just leave your questionnaire on
2 the chair, Mr. Wu. Nice meeting you.

3 Mr. Miller.

4 THE JUROR: Good morning, your Honor, begging your
5 pardon, I would normal take off the glasses and visor but I do
6 have a medicine medical reason.

7 THE COURT: Okay.

8 THE JUROR: I don't know if that will be an issue or
9 not.

10 THE COURT: Okay. Not as far as I'm concerned. You
11 have to tell me whether you think it might be.

12 THE JUROR: I don't believe so.

13 THE COURT: Okay. Are you able to see what is going
14 on here in court?

15 THE JUROR: Of course.

16 THE COURT: I know at some point Mr. Goldberg and,
17 perhaps, Ms. Fridegotto, Mr. Goldberg in particular, has shown
18 me a chart with some numbers on it. I think he is going to
19 have some blow-ups here. Circumstantial evidence tells me that
20 at some point that the contents of that wrapped package against
21 the wall are going to be opened and displayed to the jury but
22 have you no problem seeing around the courtroom?

23 THE JUROR: No.

24 THE COURT: Okay. Thank you for that explanation but
25 I am happy to hear from you.

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1 THE JUROR: Want to make sure I'd be no disrespect.

2 I've lived in Manhattan for about 30 years. I'm
3 originally from upstate New York. I rent. I live in Greenwich
4 Village.

5 associates degree in schooling. I've worked for Con
6 Edison as an electronics electrician

7 THE COURT: What was the name of the business?

8 THE JUROR: Consolidated Edison. I work as an
9 electronics technician. I have been there for about 22 years
10 now.

11 I am single. I am non custodial parent of a 16 year
12 old boy.

13 I have been through the jury selection process a
14 couple of times but I've never gone the full distance through
15 the commencement of the trial.

16 THE COURT: You have not been picked to sit on an
17 actual jury then?

18 THE JUROR: Yeah, through it's entirety.

19 THE COURT: Okay.

20 THE JUROR: Nobody I know closely, at least, or that I
21 know works in the justice system. I ride a motorcycle quite a
22 bit. I am a musician, guitarist.

23 And I did have a motorcycle accident in 2001 and we
24 finally settled in 2006

25 THE COURT: Was the case like a hard fought case that

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1 the case to get a settlement on that?

2 THE JUROR: Not particularly. The proceedings lasted,
3 approximately, three and a half days before the defending
4 lawyer finally offered an acceptable --

5 THE COURT: Okay. Were you actually in trial on the
6 matter then?

7 THE JUROR: I believe that's what you would call it,
8 yeah.

9 THE COURT: Either a trial or arbitration?

10 THE JUROR: Yeah. There was a jury selected and
11 hearing testimony and all that kind of stuff.

12 THE COURT: Okay.

13 THE JUROR: I don't see any reason that I wouldn't be
14 able to serve fairly in this case.

15 THE COURT: All right. Mr. Miller, thank you. I
16 appreciate your answers.

17 Let's see. Mr. Rowe, now I am maybe mistaken,
18 Mr. Rowe. Were you called up earlier this week too? You look
19 like a fellow that was called up.

20 THE JUROR: Yes, a couple days ago.

21 THE COURT: I never got to you in the questioning.
22 Welcome again.

23 THE JUROR: Thank you, sir.

24 I live in Manhattan around 40 years. Live in rent
25 apartment because I never bought the house. I have a reason

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1 for that. I have a one son. I raised, my friend told me
2 raised in the city. Now he is a college kid (inaudible).

3 I am retired. Before retire I have my own business
4 over 35 years.

5 THE COURT: What was your business?

6 THE JUROR: Food enterprise, retail and at the Madison
7 Avenue, 83rd Street.

8 THE COURT: Did you attend school yourself?

9 THE JUROR: I run myself everything. I have three
10 store but after 9/11 I have to close --

11 THE COURT: Oh.

12 THE JUROR: -- most of them and I moved to the Third
13 Avenue, wrong place, wrong time, so I closed that too.

14 THE COURT: All right. You've been a business man for
15 a long time. Did you go to school here?

16 THE JUROR: No. I study music at Korea.

17 THE COURT: Okay. I think we're at question 6.

18 THE JUROR: Yes. I have my wife. She is teaching the
19 kindergarten.

20 THE COURT: Okay. You've already mentioned you have a
21 son who is in culinary school, is that what you said or hotel
22 management?

23 THE JUROR: Yes.

24 THE COURT: He is in his third year?

25 THE JUROR: Yeah, a junior.

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1 THE COURT: How about prior jury service, have you
2 ever served as a juror?

3 THE JUROR: Yeah, I've been serving as a coroner's
4 juror.

5 THE COURT: How long ago was that?

6 THE JUROR: I think about four or five year ago.

7 THE COURT: What about a civil case or a criminal
8 case. Have you sat on one of those?

9 THE JUROR: Civil case I never did.

10 THE COURT: Do you know lawyers or judges or police
11 officers?

12 THE JUROR: When have you a business you have to know
13 the lawyers. First thing have you to know the real estate
14 lawyer, litigation lawyer, all kind of lawyer.

15 THE COURT: Okay.

16 THE JUROR: And you have to be friends to them.

17 THE COURT: Have you ever been in a lawsuit? Have you
18 been a plaintiff or a defendant or a witness in a case?

19 THE JUROR: No.

20 THE COURT: Never have, okay. What do you do to enjoy
21 yourself? What do you do in your free time?

22 THE JUROR: I watch HBO Bill Maher.

23 THE COURT: Okay.

24 THE JUROR: And Comedy Central John Stewart.

25 THE COURT: Hobbies, you have hobbies?

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1 THE JUROR: Yeah. I listen to music.

2 THE COURT: Okay. You've heard the questions I've
3 asked about this particular case. Is there anything that
4 you've heard me say about this case or anything in the
5 allegations, if you get picked can you serve fairly and give a
6 fair judgment?

7 THE JUROR: Sure.

8 THE COURT: Thank you. I appreciate your answers.
9 Mr. Sacco?

10 THE JUROR: Yes. Before I forget, your Honor, walk
11 over the Brooklyn Bridge stop on the number four and get off at
12 the Mosholu Parkway. You are a 20 minute walk away from the
13 Van Cortlandt Public Golf Course which is one of the oldest
14 golf courses in the country. You can just bring your clubs
15 right on the subway and be right there.

16 THE COURT: Mr. Sacco, I hesitate to tell you all of
17 you this but I gave it up about 25 years ago. I was a club
18 thrower. I went out with my dad and my brother and they said
19 never again. They are, said you are an embarrassment to us.
20 You are throwing clubs and cursing. So I gave up.

21 THE JUROR: It sounded like you might be looking. You
22 don't have to go all the way to Florida.

23 I live in northern Westchester County in a town called
24 South Salem. I have been there for at last ten years. Prior
25 to that I was here in the city. I am a life long New Yorker.

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1 I share ownership of my house with bank.

2 I am a doctor. Went to medical school here in the
3 city at Mount Sinai.

4 THE COURT: What is your specialty.

5 THE JUROR: I specialize in hospice and palliative
6 medicine. I work with patients mostly at the end of life. I
7 am at Bronx Lebanon Hospital where I have been for the last 18
8 years. And I, in fact, do have a concern in that regard that's
9 not, specifically, related to my qualification as a juror but I
10 would like your permission to bring that up to you if possible.

11 THE COURT: Sure.

12 THE JUROR: I have been working for the last several
13 months on opening an inpatient hospice unit for our patients at
14 the hospital. We did actually just opened that unit this week
15 and it's now filled with patients and I am, unfortunately, I am
16 the only physician at the hospital who is boarded in the
17 specialty and I am responsible for their care.

18 You might legitimately ask how is that I allowed that
19 to happened when I was called for jury duty some time in
20 advance. And the answer to that question is that it's been on
21 and off as to whether or not this unit would open

22 THE COURT: I am certain.

23 THE JUROR: The opening was uncertain and my hospital
24 administration typically said we've done as much as we can to
25 delay the opening of this. When can you get it done? That was

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1 on Tuesday.

2 THE COURT: Okay. That is important stuff and here is
3 what I would propose and let me see if counsel will agree. It
4 is important that we have conscientious and well spoken people
5 like you on the jury. If we were to postpone your service so
6 that you can get things underway and deal with the pressures of
7 the moment you would have to come back and finish this service,
8 could you do you that?

9 THE JUROR: May I add, sir, that I take my
10 responsibility as a juror very seriously.

11 THE COURT: Oh, I am sure.

12 THE JUROR: I would happily defer my service.

13 THE COURT: You are here today in the midst of what's
14 he going on tells me that you do take it very seriously.

15 Counsel, have any objection given the peculiar time
16 problems that Dr. Sacco that we release him from the service
17 today and deferred his service to some time once he has got
18 matters organized and in hand?

19 MR. GOLDBERG: No objection.

20 MS. FRIDEGOTTO: No objection.

21 THE COURT: Okay. Doctor, very nice meeting you.
22 Good luck with that. Sounds like a very important thing that
23 you are doing. We'll defer your service.

24 Mr. Lopez, would you give appropriate instructions to
25 Dr. Sacco and the jury administrator?

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1 COURTROOM DEPUTY: Yes, your Honor.

2 THE COURT: All right. That brings us to Ms. Daley.

3 Margaret Daley, good morning.

4 THE JUROR: I live in Westchester, Yonkers. I rent.

5 I did not go to school in this country. I work as a certified

6 nurse's aid at a nursing home, Regency Extended Nursing Home.

7 THE COURT: Mr. Lopez, do we have a mic?

8 COURTROOM DEPUTY: I think that she can maybe step up

9 to the lectern. Your voice is dropping off a little bit and

10 the court reporter around I are having some difficulty. You

11 have a small voice and this a big room.

12 I got the first part. I know you live in Westchester,

13 Yonkers. You are a nurse and go on from there if you would.

14 You are presently employed?

15 THE JUROR: Yes.

16 THE COURT: Are you married?

17 THE JUROR: No. I didn't marry. I have two children.

18 I did not serve on a jury

19 THE COURT: Tell me in about your children. Are they

20 adults?

21 THE JUROR: Yes.

22 THE COURT: What do they do for a living?

23 THE JUROR: One of them is a manager for a store and

24 one of them is a certified nurse's aid.

25 THE COURT: Okay. Do you have any connection to the

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1 court system? Do you know lawyers or judges, anything like
2 that?

3 THE JUROR: Yeah. My mom have a lawsuit.

4 THE COURT: Your mom is involved a lawsuit now?

5 THE JUROR: Yes.

6 THE COURT: Generally speaking, what is the nature of
7 the lawsuit that she is involved in?

8 THE JUROR: She fell.

9 THE COURT: Okay. So a personal injury case?

10 THE JUROR: Yes.

11 THE COURT: She is trying to get damages for her
12 injuries?

13 THE JUROR: Yeah.

14 THE COURT: OK. Were you involved? Were you a
15 witness to that at all?

16 THE JUROR: Yeah.

17 THE COURT: You witnessed it?

18 THE JUROR: Yeah.

19 THE COURT: You are going to be called as a witness,
20 do you expect?

21 THE JUROR: Yeah.

22 THE COURT: Okay. How long before the case goes to
23 trial, do you have any idea?

24 THE JUROR: No, I don't.

25 THE COURT: Okay. Do you think, Ms. Daley, that the

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1 fact that your mother is in a lawsuit and you are going to be a
2 witness do you think that that might interfere with your able
3 to fairly judge this particular case?

4 THE JUROR: Maybe.

5 THE COURT: It doesn't sound like a personal injury
6 case is anything like what is alleged here. The claims here
7 are very, very different. So it doesn't immediately occur to
8 me that there would be any connection but I just wonder if
9 knowing that you are going to be a witness, if maybe that will
10 come into your mind or do you think that that would influence
11 you at all in deciding this case? What do you think?

12 THE JUROR: Sometimes I have to go with the lawyer so
13 I don't know.

14 THE COURT: Okay. So I am catching you off guard here
15 I know because you didn't anticipate any of this but let me ask
16 you this, what about the allegations? You've heard me read the
17 allegations is there anything about that that shocks you or
18 that causes you to think you might favor one side or the other
19 side automatically?

20 THE JUROR: Yeah.

21 THE COURT: You do think you might favor one side or
22 the other?

23 THE JUROR: (Nodding). (Shrugging).

24 (Pause)

25 THE JUROR: My hobbies, I like to cook and I like to

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1 go shopping malls.

2 THE COURT: I want to come back to one question. I am
3 not sure you understood what I was asking. You heard when I
4 read what this case is about, right?

5 THE JUROR: Yeah.

6 THE COURT: But the plaintiffs are essentially
7 claiming they were discriminated against and there's other
8 claims and defendants deny those claims. Do you think you can
9 judge those claims fairly or do you think that you might favor
10 one side or the other?

11 THE JUROR: Maybe.

12 THE COURT: You don't know.

13 THE JUROR: (Shaking her head).

14 THE COURT: All right. Well, I think given
15 Ms. Daley's indecision about whether she can fairly judge the
16 claims I would propose that she be excused for cause unless
17 counsel have an objection.

18 Mr. Goldberg, you can follow-up if you have any
19 additional questions

20 MR. GOLDBERG: Could I ask her?

21 THE COURT: Yes, of course.

22 MR. GOLDBERG: Ms. Daley, do you feel that you could,
23 if you were picked, do you feel you could sit, listen to the
24 evidence and make a decision on the case based on the evidence
25 that is presented in this litigation, this lawsuit?

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1 THE JUROR: (Nodding).

2 THE COURT: All right. Ms. Fridegotto, you may
3 inquire also.

4 MS. FRIDEGOTTO: Thank you.

5 You do not have to tell us what it is that has you
6 thinking that maybe, but do you think that you could -- I don't
7 know how to put this. Do you think that you could approach the
8 case with a clean slate and then see where the evidence takes
9 you and only make a decision once all the evidence has been
10 presented to you or do you feel that just starting off straight
11 off the bat you tend to already have, I guess, some ideas
12 regarding which way the case is going to go based on anything
13 that you might feel?

14 THE JUROR: Yeah. (Nodding).

15 THE COURT: All right. Thank you, Ms. Daley.

16 We'll leave Ms. Daley for now. You may have your seat
17 back.

18 Mr. Loperena, good morning.

19 THE JUROR: No problem. I live in the Bronx, New
20 York. I rent the apartment.

21 I just graduated from Apex Technical School to be an
22 auto technician.

23 THE COURT: Okay.

24 THE JUROR: I am unemployed right now because I just
25 graduated. My present employer was actually Duane Reade which

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1 was like two years ago.

2 THE COURT: What kind of business is Duane Reade?

3 THE JUROR: That's a drug store. It's like Walgreen's
4 but it's only in New York.

5 THE COURT: That's why I had to ask you, I guess.

6 THE JUROR: I am single. I don't have any children.

7 I never served as a juror. I'd love to.

8 I don't have no close connection with any judges,
9 lawyers or anything

10 THE COURT: Okay.

11 THE JUROR: My free time I like to work on my '96
12 Honda Accord.

13 No, I don't think -- I judge everything fairly.

14 THE COURT: You are not tilting one way or the other
15 just on hearing what we've discussed so far?

16 THE JUROR: Not at all.

17 THE COURT: Let me follow-up with you. I don't have
18 special concerns about you so I am speaking to everybody here
19 but I want to make this point.

20 If you are picked to sit on this case you can't talk
21 about it with anybody.

22 THE JUROR: No, I understand.

23 THE COURT: And what I will tell the jurors is that
24 you have like a girlfriend or somebody you hang out with?

25 THE JUROR: No.

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1 THE COURT: Friends?

2 THE JUROR: Friends, yeah.

3 THE COURT: Well, if you go back tonight and your
4 friends say, hey, you got picked for this jury. Tell us about
5 it. You've got to say, I can't tell you anything. All I can
6 say is it's a civil case and it's supposed to last three or
7 four days. At the end once we have reached a verdict I'll give
8 you a blow-by-blow account but not until then. That's what you
9 got to say. Are you willing to do that?

10 THE JUROR: Definitely.

11 THE COURT: Here is another rule and this seems a
12 little curious. You can't even talk to the other people that
13 are serving on the jury with you about the case until the case
14 is submitted to you for a decision.

15 You ever watch that program Survivor?

16 THE JUROR: No.

17 THE COURT: There's a program, they put all these
18 people on an island.

19 THE JUROR: No, I heard of it.

20 THE COURT: I don't watch it either but I understand
21 that what they do is they make little deals with each other and
22 they say, we are going to vote to kick off this guy. Then we
23 are going to form these things called coalitions. Jury service
24 is not like Survivor. Jurors don't form coalitions. They wait
25 until the end and everybody discusses the evidence. After

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1 everything's been said and done, you've heard from the lawyers,
2 you've heard the instructions, you've head all of the evidence
3 in the case and, importantly, you've heard from your fellow
4 jurors, that's when you make up your mind in any case. But in
5 this case in particular can you wait until then and keep an
6 open mind until the very end?

7 THE JUROR: Absolutely.

8 THE COURT: Now, what I am asking you will be sounding
9 it is contrary to human nature because we form impressions as
10 we process information. Somebody will take and say something
11 and we'll say that makes me think this. And this instruction
12 that I am talking about doesn't forbid you from forming
13 impressions. It just says, exercise the mental discipline to
14 say to yourself, I am not going to decide which way I am voting
15 until I've heard everything and my fellow jurors have given me
16 their perspectives. Maybe I've missed something. I am open to
17 listening to what other people have to say. Only then will I
18 makeup my mind on how I am going to vote. You want to sit on
19 this case, if you get to sit on this case can you follow that
20 rule?

21 THE JUROR: Absolutely.

22 THE COURT: Thank you. Appreciate your answers.

23 Finally, Mr. Cohen. Thank you for being patient.

24 THE JUROR: I live in Manhattan. I've lived there my
25 entire life, upper west side 40 years. I rent my apartment.

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1 I graduated from high school and from college and from
2 business school. In college I studied sociology. In business
3 school, finance.

4 I'm a real estate dealer. I'm a partner with a
5 developer on a project. My present employer I'm essentially
6 self-employed. I'm in a partnership. That's two years now.

7 I am single, not married. I don't have any children.

8 I have serves as a juror on a civil case. We did
9 reach a verdict three years ago.

10 THE COURT: What kind of case?

11 THE JUROR: Malpractice.

12 THE COURT: Okay.

13 THE JUROR: My father's an attorney, maritime law
14 practice.

15 THE COURT: Is he still in practice?

16 THE JUROR: Yes.

17 THE COURT: Do you know other lawyers, friends of your
18 father?

19 THE JUROR: Many.

20 THE COURT: Any of the lawyers are well acquainted do
21 the kind of work that counsel in this case are doing,
22 employment work?

23 THE JUROR: No. Most are corporate law.

24 THE COURT: Okay.

25 THE JUROR: My free time exercise, read, socialize

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1 with friends and family.

2 THE COURT: You look like you are pretty trim and
3 buffed out.

4 THE JUROR: Very kind, sir.

5 THE COURT: What about this case? Now you've heard
6 the questions that I've asked all the other perspective jurors.
7 Incidentally, would you have given significantly different
8 answers to the one that has been given by anybody who still
9 remains here as part of the perspective jury?

10 THE JUROR: No, your Honor.

11 THE COURT: Can you fairly judge this case? You know
12 what the allegations are? You now know the allegations are
13 denied. Can you sit, listen and make a judgment and tell the
14 parties, here the accurate version, here is the consensus
15 version of the eight of us that are conscientious that you
16 chose to decide this case and here is our verdict based on
17 that; can you do that?

18 THE JUROR: Yes, your Honor.

19 THE COURT: Thank you very much, Mr. Cohen.

20 All right. That concludes the questioning. Counsel,
21 are there any challenges for cause that you want to make at
22 sidebar?

23 MS. FRIDEGOTTO: Would it be possible to have five
24 minutes, your Honor?

25 THE COURT: Yes. At this point I am just asking if

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1 you want to make a challenge for cause. If there are no
2 challenges for cause then I'll have Mr. Lopez give you the
3 sheets, Ms. Fridge.

4 MS. FRIDEGOTTO: Yes, there will be challenges.

5 THE COURT: Okay. You have a challenge for cause?

6 MS. FRIDEGOTTO: Please. Okay. I'll see both
7 principal counsel at sidebar.

8 (Continued on next page)

1 (Sidebar)

2 MS. FRIDEGOTTO: I wanted to challenge number 10. I
3 am very concerned about the issues regarding the fact that she
4 had had prior experience regarding this type of case. I would
5 not want to be make her feel uncomfortable and have to disclose
6 what the exact nature of it might be, so that might be related
7 or because she is a woman and therefore I would like to
8 challenge her just because of that.

9 MR. GOLDBERG: My sense is that she can judge the case
10 and that she is trying very hard to serve and so I think that
11 she has thought about it and because if she didn't say she
12 could feel that she could do the job I would not be inclined to
13 agree to that, I would think she's qualified.

14 MS. FRIDEGOTTO: One more thing, personally, I just
15 felt that the fact that she kept bringing it up more than once
16 and not just the initial time when your Honor was questioning
17 her that is what would lead me to believe that it would
18 possibly and I don't think it would be intentional doing, I
19 just feel she would be inputting a little bit of her personal
20 experiences and that was the why she kept bringing it up.

21 THE COURT: Okay. The Court denies the challenge for
22 cause, inquired extensively of Ms. Gordon. I tend to think
23 that she is just being very conscientious. I gave a preamble
24 type instruction of why I explained and where I regarded her
25 answer as an attempt to be very conscientious to say, look,

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1 there was something in my background the lawyers ought to know.
2 I asked her several times whether she could distinguish between
3 evidence that she'd hear in a case and what had happened to her
4 and I asked her whether she would allow no require involvement,
5 what she was involved with to control the outcome here. She
6 clearly said no. So I don't see a -- for excusing her for
7 cause.

8 Next?

9 MS. FRIDEGOTTO: This is, the issue is with number 18.
10 I'm not exactly sure that she understands English.

11 THE COURT: I agree. I see a big, big language
12 problem with her and I am inclined to excuse her for cause.

13 MR. GOLDBERG: I think that's what it was, language
14 barrier.

15 THE COURT: I think there will be a problem
16 comprehending the evidence. Here is what I'll do. She is
17 discussed for cause. Just scratch her off the list. I am not
18 going to tell her she's excused for cause. We will let her go
19 with everybody else when we excuse the rest of the jurors but
20 you can assume Ms. Daley is excused for cause. She was clearly
21 trying but I could tell she just wasn't comprehending what she
22 was being asked. A couple of times the answers didn't make
23 sense.

24 Anything else?

25 MS. FRIDEGOTTO: No.

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1 THE COURT: We will give you time. I am going to pass
2 the list out. I am not going to ask you to instantaneously
3 exercise challenges. That's it?

4 MR. GOLDBERG: Yes.

5 MS. FRIDEGOTTO: Yes.

6 (Continued on next page)
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1 (In Open Court)

2 THE COURT: All right. The Court has entertained
3 challenges for cause from counsel at sidebar. At this time,
4 Mr. Lopez -- actually counsel have the list.

5 COURTROOM DEPUTY: I've already provided the list to
6 counsel, your Honor.

7 THE COURT: This is the time for counsel to exercise
8 their preemptory challenges and you could do so with some
9 dispatch.

10 (Pause)

11 THE COURT: I've made the point to all of you as part
12 of what our experiences are, I've tried a lot of cases for 18
13 years. I've tried a lot of cases and I went through a lot of
14 jury selection myself. I had one case where the jury selection
15 process, this process in which we have been involved for the
16 last hour and a half lasted three weeks. Can you imagine
17 coming and listening to questions and having repetitive
18 questions asked of successive jurors? Remember the old Bill
19 Murray movie, Ground Hog Day? I'd get up every morning. The
20 alarm clock would go off. I've a vowed to myself if I was ever
21 in a position to affect that part of the process I would do
22 what I could to expedite it. So the procedure that I've
23 followed I am told is not a common one here. It is called the
24 Arizona method. They used this method. It originated in
25 Arizona.

1 The parties now have three preemptory challenges each.
2 I require them to exercise them simultaneously and without
3 knowing what the other guy is doing. So it's possible the
4 lawyers to, both lawyers may excuse the same prospective juror.
5 But it's an efficient way of picking a jury that doesn't really
6 compromise the partys' ability to make an assessment and pick
7 people that they want. And as I say, it usually takes about an
8 hour and a half or an hour and 15 minutes. Much better than
9 three weeks.

10 In some systems the lawyers are allowed to put
11 questions to the jurors too. I am from California. That's
12 sort of the order of the day there and that can go on
13 tediously. A lot of times you find the lawyers aren't really
14 interested in the answers. They're trying to make a point
15 beforehand. They'll get time to advocate once the case is
16 underway.

17 Incidentally, for those of you who haven't served on
18 juries before are unfamiliar with the court process, the
19 lawyers by the rules of the court and the contentions of the
20 Court won't be interacting with you personally once the case is
21 underway. You'll hear from them here in court but if you see
22 them here during the breaks they won't talk to you. It's not
23 because they're snotty. Both lawyers I've met, they're decent
24 approachable people but they are following my order not to
25 speak to prospective jurors because it looks bad if

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Jury Voir Dire

1 Mr. Goldberg is seen chatting with you. Then it looks like
2 maybe he is trying to curry favor or somebody might think you
3 are talking about the case. So they won't do that. But take
4 my word for it, they're decent approaching people and you'll be
5 able to talk to them after case is all over.

6 I am here for two weeks. As a federal judge you can
7 sit anywhere in the country where there's a federal court.
8 There was a need here and there is a lot of cases here. Some
9 of the judges had a need to have somebody come in and help
10 them. So I took on four cases. And two of them settled once I
11 made rulings and set some time limits. Then I tried one and
12 this is the other. And if we finish I might even take on a
13 fifth case.

14 But impetus for me coming out here is my wife hasn't
15 been to New York and she is joining me tonight. Unfortunately,
16 I've got to work while she is taking the tour and the Circle
17 Line but she wanted to see New York. But this is return for
18 me. I came here when I was in still in law school. My last
19 semester in law school I worked for the U.S. Attorney's Office.
20 That was 32 years ago. I lived up at Columbia University in
21 the dorm and took the subway down every day but I spent the
22 summer in 1978 here. Some things have changed but many things
23 have not.

24 So I tell you these things to pass the time with you
25 while the lawyers make their decisions. What we'll do is,

06BAAVEE2

Jury Voir Dire

1 they're deciding who they want to have on this case. Once they
2 turn in their sheets indicating their preemptory challenges
3 Mr. Lopez will reconcile the list and we will call the names of
4 the first eight jurors, perspective jurors, who have not been
5 stricken and they will be the jury in this case.

6 In federal court whether a criminal or civil case the
7 juries must be unanimous and in civil cases we don't have
8 alternates. All jurors who sit and participate in the trial
9 will deliberate at the end and be part of the process. We to
10 have at least six, so I've impaneled two more than necessary.
11 And as I said, I don't anticipate that this case is going to
12 present a time problem for anyone. I think all of you were
13 probably time screened too. You had an opportunity to say oh,
14 no. I've got a big thing coming up. I can't serve this week.
15 Is that accurate?

16 (Pause)

17 THE COURT: Once the list is ready counsel will have
18 an opportunity to see it before we call the names and make any
19 objections. If there are any to the list I'll hear those.

20 Folks, those of you in the jury box if I could ask
21 that you take a seat in the gallery or just any where else in
22 the courtroom. This will avoid people having to step over each
23 other when we do call the names of those who have been
24 selected.

25 (Pause)

06BAAVEE2

Jury Voir Dire

1 THE COURT: All right. Mr. Lopez, you've reconcile
2 the lists?

3 COURTROOM DEPUTY: Yes, your Honor.

4 THE COURT: Counsel, if you'll take a look at the
5 board that the clerk has.

6 (Pause)

7 THE COURT: Inform me, please, whether your peremptory
8 challenges are accurately reflected.

9 (Pause)

10 MS. FRIDEGOTTO: No, they're not, your Honor, because
11 one of the people that I've challenged is still listed.

12 THE COURT: Okay. All right.

13 (Pause)

14 THE COURT: Mr. Goldberg, you may approach to make
15 sure that your peremptories are --

16 (Pause)

17 (Continued on next page)

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1 THE COURT: All right, counsel have had an opportunity
2 to look at the list as reconciled.

3 Mr. Goldberg, does the reconciled list accurately
4 reflect the challenges issued by the plaintiffs?

5 MR. GOLDBERG: Yes, your Honor.

6 THE COURT: Ms. Fridegotto, does the list accurately
7 reflect your challenges on behalf of defendants?

8 MS. FRIDEGOTTO: Yes.

9 THE COURT: Is there any objection by either party to
10 the list as reconciled?

11 MR. GOLDBERG: No, your Honor.

12 MS. FRIDEGOTTO: No, your Honor.

13 THE COURT: Call the names.

14 If your name is called, come back to the jury box.

15 THE CLERK: Juror number 1, Cato Jones.

16 Number 2, Robert Docherty.

17 Juror number 3, Viola Mapp.

18 Juror number 4, Linda Reed.

19 Juror number 5, Steven Miller.

20 Juror number 6, Jai Hwan Rowe.

21 Juror number 7, Milton Loperena.

22 Juror number 8, Daniel Cohen.

23 Those jurors whose names I did not call, I am just
24 going to ask you to report to the courtroom right across the
25 hallway and I will be there very shortly.

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1 THE COURT: Hold on one second.

2 I want to address you before you leave.

3 Mr. Goldberg, Ms. Fridegotto, are these the ladies and
4 gentlemen you have chosen to try your case?

5 MR. GOLDBERG: Yes, your Honor.

6 MS. FRIDEGOTTO: Yes, your Honor.

7 THE COURT: Folks, those who were not called I want to
8 thank you. It has been my pleasure to meet you. Thank you for
9 coming today. This is important stuff. As you heard me say,
10 if you were in the position of the plaintiffs or the defendants
11 you would want conscientious people like yourself to be
12 available to serve and to judge this matter and to reach a
13 conclusion.

14 Thank you. My great pleasure to meet all of you.

15 You are excused.

16 (Prospective jurors excused)

17 THE COURT: This is the last time it is going to seem
18 a little like church, but if you will all stand and raise your
19 right hand, we will swear you in as the jurors in this case.

20 (A jury panel was duly sworn.)

21 THE COURT: Ladies and gentlemen, I am going to give
22 you a few preliminary instructions in this case before we take
23 our lunch break, and I assume we will break at about twelve.

24 Let me talk to you about logistics going forward now
25 that you are the jury in this case.

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1 We start at 9:00 o'clock and we will go until twelve.
2 We will take a 15 minute break, this is starting Monday of
3 course because we already subsumed the morning today. In the
4 afternoon we will start at one and we will go until five and we
5 will take a 15 minute break in the afternoon as well. You will
6 have an hour for lunch.

7 I am informed that if there is a line trying to come
8 into the court house, if you tell the court security officer
9 that you are a sitting juror and that you need to get through
10 the line, they will move you to the front, you won't have to
11 stand in line. Please do that. That will insure that the hour
12 we give you is adequate for you to get something to eat and
13 make it back here.

14 We move at the pace of the slowest ship in the convey,
15 so what that means is if one of you is not here we can't start.

16 Please come on time. Allow a little extra time to get
17 here in the morning and be mindful of the time during the
18 breaks. As I said, I want to manage your time efficiently, so
19 if you are all here we can start, if you are not we can't.

20 Last week I made the same speech and unfortunately we
21 got somebody who was 20 minutes late and all her fellow jurors
22 were the box, the dapper court reporter was here ready to tap
23 the keys and I was waiting and the juror was very embarrassed
24 to have to come in and make excuses why she was late and kept
25 everybody waiting.

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1 I don't do that intentionally, I don't revel in it,
2 but do be mindful we start and end on time and it is a courtesy
3 for fellow jurors to be here on time.

4 I want to give you some preliminary instructions
5 before I send you on your first break. These instructions will
6 be preliminary, kind of broad strokes, about burden of proof
7 and some of the things that you probably should know before you
8 start hearing evidence, which will occur this afternoon.

9 At the end of the case I will give you further
10 instructions, more specific instructions and, in fact, I will
11 give you a packet of instructions about this case that will go
12 back with you when you deliberate the case so you will have
13 them to refer to during your discussions and deliberations.

14 Ladies and gentlemen, you are now the jury in this
15 case and it is my duty to instruct you on the law.

16 You are not to infer from these instructions who are
17 anything that I say or do during the course of the trial that I
18 have any opinion about what the evidence is or what verdict you
19 should reach. The parties have the option of waiving their
20 right to a jury and having me decide the case. They did not
21 opt to do that. They want a consensus decision from people
22 drawn from the community. I don't feel badly about that at
23 all. It is their absolute right and I understand why they
24 would exercise it.

25 I tell you that so that you don't read into anything

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1 that I say and I try not to say or do anything that indicates I
2 have an interest in the outcome or that your verdict should be
3 one way or the other, but I don't, I don't, so if you think I'm
4 leaning one way, you are misapprehending things. It's up to
5 the twelve of you have. You are going to be the judges of the
6 facts in in case. You are going to say what happened here and
7 what the outcome should be.

8 It is your duty as jurors to find the facts from all
9 the evidence in this case and then to those facts as you kind
10 they will you apply the law as I give it to you.

11 You have to follow the law as I give it whether you
12 agree with it or not. In deciding this case you must put aside
13 subjective factors, like your personal likes or dislikes,
14 personal opinions or prejudices or sympathy. What that means
15 is you have to decide the case fairly and based solely on the
16 evidence. The oath that you took just now confirms that
17 obligation.

18 In following the instructions that I give you now and
19 I will give you later you have to follow all of them and not
20 single out some and ignore others, they are all equally
21 importantly.

22 I explained to you already what this case is about. I
23 will not read the claims and defenses again. Suffice it to say
24 that this is an employment discrimination case and the
25 plaintiffs have made allegations which the defendants deny and

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1 we have you here to decide this.

2 Civil cases are decided by a standard of prove called
3 preponderance of evidence. What that means is that when a
4 party has the burden of proof on any claim that you must be
5 persuaded by evidence that the claim is more probably true than
6 not. It's often described as just tilting the balance, 51
7 percent wins in a civil case. The quantum of evidence you may
8 find is much higher than that, much lower, all it takes when a
9 party has a burden on an issue or a claim or a defense it is to
10 convince you it is who are likely true than not.

11 You should base your decision in the case on all of
12 the evidence regardless of which party presented it.

13 The evidence that you are to consider in deciding what
14 the facts consist of consists of the following:

15 First, you are going to hear sworn testimony from
16 witnesses. They are going to be called, they will take an oath
17 to tell the truth and certainly is going to be the bulk of the
18 evidence in this case, sworn testimony.

19 I anticipate that already also going to be physical
20 exhibits. There is going to be probably documents, maybe some
21 photographs, I don't know for sure, but there will be things
22 that are marked as evidence. If those things are received in
23 evidence, if you hear me say that will be received in evidence,
24 then you can also consider that. And documentary evidence and
25 that type will go back to you when you deliberate. You will

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1 have that to consider.

2 Finally, sometimes certain facts are uncontested.

3 There may be things that are important but neither side contest
4 it, and if that is the case it happens occasionally that the
5 lawyers will agree, they will stipulate that those things are
6 true. It will avoid the necessity of calling a witness
7 unnecessarily. So if the lawyers stipulate to any facts, then
8 you should accept those facts that are agreed to as true and as
9 proved.

10 Let me tell you in contrast what is not evidence.

11 First, as I told you, testimony from the stand, things
12 received in evidence and then stipulations are evidence.
13 Here's what's not evidence:

14 Arguments and statements by the lawyers are not
15 evidence.

16 I don't say to deprecate these lawyers, but here's
17 what's true about this. They weren't at the hotel when these
18 things happen. They had to reconstruct this case after the
19 fact much as you will and much as I will. They don't have any
20 historical connection to the case. You should take the
21 evidence from people who do have a historical connection, who
22 were part of this. And so bear that in mind when you hear the
23 lawyers talk about the evidence or characterize the evidence.
24 They are not witnesses, they weren't there, they are doing
25 their best to present the case in their understanding of them.

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1 Likewise objections and questions by lawyers are not
2 evidence. The lawyers have a duty to their clients to object
3 when they believe a question is improper and the under the
4 rules of evidence and you should not be influenced by a lawyer
5 making an objection or by the court's ruling on it.

6 From time to time in the course of the trial I may
7 tell you to disregard certain evidence or I will strike it out..
8 That most often comes up when a witness is asked a question and
9 hears the question differently than what's intended or the way
10 the rest of us hear it and then answers non-responsive.

11 Sometimes it happens the lawyer will say that is a
12 non-responsive answer, Judge, I ask you to strike that. If I
13 do that, you go through the mental discipline of saying I heard
14 it, but I'm not going to consider it, it's not going to play
15 apart in deciding this case, I'm going to keep it out of my
16 mind. So we ask you to do that if I strike any testimony or
17 disregard any testimony. It doesn't come up often, but it may
18 come up in the course of the case and that's what you are to do
19 if it does.

20 Finally, anything you see or hear when the court is
21 not in session is not evidence. You will hear this principle
22 in several of the instructions and hear it is:

23 All of you have to decide the case bear on the same
24 information and that is the evidence that is presented here in
25 court. Nothing outside of that. No external information,

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1 nothing in the newspapers, nothing on the Internet, just what's
2 here.

3 The lawyers are equipped to present every bit of
4 evidence that you need to have to decide this and you have must
5 do it on the basis of what you hear in this case.

6 Remember, jury service is not like Survivor, it's not
7 independent decisions that are being made outside the presence
8 of others.

9 You are going to hear both direct and circumstantial
10 evidence. Some of these allegations have to do what did
11 somebody intend, what was on their mind and obviously the only
12 way we can infer what is on somebody's mind is by
13 circumstantial evidence. We consider what they said and did as
14 indicating what they were thinking Teatley.

15 Direct evidence is direct prove of a fact, such as
16 testimony by a witness about what that witness personally saw
17 or personally heard or personally did.

18 In contrast, circumstantial evidence is indirect
19 evidence. It is proof of one fact from which you can infer
20 another fact.

21 If the issue to be tried before you is whether a jet
22 plane flew over the court house this morning, a party could
23 proffer that by calling in a witness that say yeah, I looked up
24 and I saw the plane and it flew over and if you believe that
25 you can find for that party.

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1 Another way of proving it is somebody can come in and
2 say you know, I didn't see a plane, I didn't here a rumble of
3 jet engines, but I saw one of those vapor trails that planes
4 leave and it was just starting to break apart, and you can say,
5 well, okay, the vapor trail must mean a plane had flown over.
6 You can infer that fact.

7 The point is direct and circumstantial evidence are
8 both competent ways of proving facts. Sometimes circumstantial
9 evidence gets a bad rap if you watch TV lawyer programs and say
10 circumstantial evidence. That is not true in real life. Both
11 forms of evidence are competent. Ultimately it's up to you to
12 decide how much weight to give either form of evidence, direct
13 or circumstantial.

14 I alluded to the rules of evidence and I predicted to
15 you that there will be objections in this case. There are
16 rules of evidence that control what can be received in
17 evidence. They are contained in a big book like this. You go
18 to law school to learn those rules of evidence.

19 Now, at least the misconception sometimes a lawyer
20 will object and sometimes the juror will think why are they
21 objecting to that, I really want to know the answer to that,
22 why is that being hidden from me. That's the wrong way to look
23 at it. The rules of evidence have been maintained and have
24 come together over a long period, hundreds of years. The
25 object of the rules of evidence is to make sure you get

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1 reliable information on which to base a decision. That way
2 once you reach a verdict in this case, no one can undercut it
3 by saying, oh, of course they reached that decision, look at
4 the kind of information that they had.

5 I will give you an example of one of the rules of
6 evidence that establishes this point that I'm making.

7 We have a rule called hearsay. All of you heard that
8 term before. Hearsay generally prohibits somebody from coming
9 before the court and saying what somebody else said outside of
10 court and the reason behind that rule is the context of a
11 statement is often very important. We want to know what the
12 circumstances are, we want to hear it from the speaking himself
13 or herself.

14 The hearsay rule is designed to make sure that you get
15 the context of a statement when that statement is used in
16 court.

17 Now, there are a lot of exceptions to the hearsay
18 rule, but it proves my point about why these rules exist. They
19 exist to insure that you get reliable information on which to
20 base a decision.

21 So if a lawyer makes an objection in this case,
22 understand that we are doing our best to insure that the
23 evidence that you get will be reliable and can be counted on.
24 You shouldn't make any inference from the fact that a lawyer is
25 making an objection or how I rule on it.

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1 If I overrule an objection, that means that the
2 question can be answered or the exhibit can be received. If I
3 sustain an objection, that means I have determined that it is
4 not admissible under the rules of evidence.

5 Again, don't draw any inference from the court's
6 ruling on objections or from lawyers making objections.

7 I mentioned to several of the prospective jurors that
8 in deciding this case you may have to decide which testimony to
9 believe and which testimony not to believe. You, as jurors,
10 may believe everything a witness says or a part of it or none
11 of it at all.

12 Here's a non-exclusive list of factors for you to keep
13 in mind as you listen to testimony in this case. These are
14 common sense things that if we had to write them down or
15 articulate them these are things that would inform them in
16 making judgments in our daily life, but they also apply in
17 court.

18 First, ask yourselves what opportunity and ability did
19 the witness have to see or hear or know the things that he or
20 she is testifying about.

21 Second, ask yourselves what's the state of the
22 witness' memory? Is it good or is it sketchy?

23 Third, it's very important, I alluded to this during
24 the jury selection process, what is the witness' manner while
25 testifying?

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1 It's often said that we, jurors in particular, have
2 lie detector instincts. They can look at somebody and have
3 kind of a sixth sense. As you heard me say not coincidental
4 that courtrooms are arranged with the witness stand very close
5 to the jury box. We want up to pay attention.

6 Fourth, ask yourselves does the witness have any
7 interest in the outcome of the case or do I detect any obvious
8 bias or prejudice on the part of this witness. That can also
9 determine whether you believe or disbelieve a witness.

10 Is there other evidence that contradicts the witness'
11 testimony. That should be a consideration.

12 Does the witness' testimony seem reasonable to you in
13 light of all the evidence.

14 You have been selected because the lawyers have made a
15 judgment here that you are intelligence, experienced,
16 conscientious people. We want you to apply those facilities
17 here. Apply your experience, apply your common sense.

18 Finally, any other factors that you think bear on
19 believability you may consider.

20 As I said, this is a non-exclusive non-exhaustive
21 list. Use your God common sense in assessing the evidence in
22 this case.

23 Remember this, also, that the weight of the evidence
24 as to a fact doesn't necessarily depend on how many witnesses
25 testify about it, what that means is your task isn't just to

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1 count up the number of witnesses on one side or the other and
2 go with the side that calls the most witness, your task is not
3 quantitative, it's qualitative. You look at the quality of the
4 evidence. You can be convinced by the testimony of a single
5 witness that something happened or didn't happen. Likewise,
6 one side or the other may call many witnesses and you can say I
7 don't believe it, I don't care if they call ten witnesses, I
8 know things don't happen like that, I'm not going to believe
9 that. Again, it's not a counting exercise, it is an evaluation
10 of the quality of the testimony that you will hear.

11 Let me say a few words about your conduct as jurors
12 before I release you for the lunch break.

13 First, you are to keep an open mind throughout this
14 trial. As you heard me explain and discuss with Mr. Montalio.
15 This doesn't mean, this instruction doesn't mean that you don't
16 form preliminary impressions. You are going to form
17 preliminary impressions. That's what we do as human beings.
18 We here information, we process information, we have
19 impressions about it. What this really means is exercise the
20 discipline in your mind to say I'm not going to let myself
21 decide that I'm voting this way or that way until I've heard
22 everything.

23 This case is going to involve the presentation of
24 several witnesses. You are going to hear from the lawyers once
25 you return from your lunch break. They are going to tell you

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1 what they think they are going to prove and at the end they
2 will sum up the case for you, they think what they have prove.
3 You are going to get instructions of the law and an important
4 component of this, as I said, is the viewpoint of fellow
5 jurors. It's not uncommon that people change their minds about
6 impressions that they had during jury deliberations.

7 I sat as a juror once, believe it or not. I said this
8 is going to be easy. I went back, I tried a lot of cases, I
9 thought I got this down, and guess what? We got in the jury
10 room and people began talking and I will said I have never
11 thought about that. That's a good point. And it turned me
12 around on some of my preliminary impressions.

13 That can and possibly will happen to some of you. So
14 keep an open mind until the time the case is finally submitted
15 to you.

16 Second, because you must decide this case based on the
17 evidence and on the instructions you should not be exposed to
18 any other information about the case.

19 I don't think there is any press coverage of this
20 cases. It's not like you will pick up the paper tomorrow and
21 see it splashed on the front of the paper. We don't allow
22 cameras in federal courts, there won't be TV coverage, but more
23 generally what you are reading concerns sexual harassment
24 claims, put it aside until this case is over if you are
25 inadvertently exposed to it. We want you to decide the case

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1 based on the evidence here.

2 Another component of this is that you should not
3 attempt to do any research about the case on your own. Again,
4 that would violate this rule that all eight of you decide the
5 case on strictly what is presented here.

6 One of the problems with juror selection, jury service
7 is we want conscientious people, we want people who are going
8 to try to get it right and apply their good common sense, but
9 those are the very people that say I want to do a good job so
10 I'm going to look something up on the Internet, I'm going to
11 Google it to make sure I got this right.

12 You can't do that in this case. You can't look to
13 outside sources. You have to rely on the lawyers to present
14 the relevant evidence.

15 You may or may not have heard about this case. We had
16 a case in California a few years ago against a guy named Scott
17 Peterson. He killed his pregnant waiver and dropped her at the
18 bottom of the ocean.

19 Did that make the news back here?

20 The presentation of evidence in that case took seven
21 months. The lawyers were presenting evidence for seven months.
22 Just as jury deliberations started, one of the jurors got on
23 the Internet and looked up some term. Fortunately, the judge
24 was able to catch that and singled her out before she told the
25 other jurors about what she had seen and kind of contaminated

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1 them, but she had to be removed from the jury after seven
2 months after sitting and listening to the evidence.

3 So don't do that. If you do that I would have to
4 remove you and there is a chance we would have to start all
5 over this which would cost everybody a lot of time and money
6 and effort. As I said, I'm only here for two weeks so we got
7 to get this done this week.

8 Finally, regarding this case and your duty not to talk
9 about it, don't let other people approach you and talk about
10 the case, either. If that happens, and I don't think it will,
11 report that immediately to Mr. Lopez and he will tell me
12 because I want to know about that. No one should approach you
13 and attempt to talk to you about this case nor should you
14 engage anyone in conversation about this.

15 Now, we have provided note pads for you or well. They
16 will be under your chairs. You are permitted to take notes
17 during this case if you want to. As I said it is anticipated
18 this will be a relatively short case. If you are good in
19 compartment meant living information, then just sit back and
20 listen, you don't have to take notes. If you feel more
21 comfortable jotting down a note or two you are free to do that.

22 One caution I give if you do take notes, it is a
23 divided attention task. Don't be so ensconced in your notes
24 that you miss the bleeding he will elephant traipsing in the
25 room.

06BYVER3

1 I see some conscientious jurors trying to take
2 everything down. That's why we have a court reporter taking
3 down everything. So bear that in mind.

4 Speaking of our court reporter, we do not have,
5 despite all of our innovations and technology, we don't have an
6 ability to push a button and have an immediate script, we don't
7 have that. So pay careful attention to it. We don't have a
8 transcript for you. You can't say judge, we want to listen to
9 so-and-so's testimony, have it read back. We don't have a
10 transcript. Those are prepared usually long after a trial has
11 concluded, if at all. So pay careful attention. You will have
12 to rely primarily on your memory of the testimony here. As I
13 said, it's going to be a fairly short trial so that shouldn't
14 be difficult. This isn't a seven month ordeal.

15 Let me remind you one last time:

16 Don't discuss the case with any one.

17 Don't form any fixed opinions about the case or what
18 your verdict should be until it is submitted to you.

19 Keep an open mind.

20 Okay. It is 12:15. Here's what we will do. We will
21 break until 1:15. The admonition I will tell you, remember the
22 admonition and it means all those does and don't, I won't
23 repeat it fully each time.

24 Please be back in your seats at 1:15.

25 Remember if there is a line downstairs tell the court

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1 security officer I'm a sitting juror, I need to get through and
2 they will put you to the front of the line.

3 Have a pleasant lunch. See you at 1:15.

4 (The jury left the courtroom)

5 All right, the jury is not present, counsel and the
6 parties are present.

7 Any issues we need to take up before we recess?

8 MS. FRIDEGOTTO: You had issues regarding the
9 exhibits.

10 MR. GOLDBERG: I will talk to you about that.

11 MS. FRIDEGOTTO: Thank you very much, your Honor.

12 THE COURT: Again, let me remind you, our preference
13 is we take up legal issues on the breaks. I hate to cut in
14 your lunch break. I will be here generally by 8:30 or after
15 the day's session in court.

16 If there is something that you in your judgment I just
17 have to talk to the judge at side bar, then I will entertain
18 it, but I discourage side bars. They are a waste of time.

19 Have a nice lunch. I will see you at 1:15.

20 (Luncheon recess)

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A F T E R E R N O O N S E S S I O N

1:15 o'clock p.m.

(In open court the; jury present)

THE COURT: We are back on the record.

THE CLERK: All jurors present, your Honor.

THE COURT: This begins the matter of Veerman
investigate Deep Blue Group, et al.

Ladies and gentlemen, at this time let me give you a
little forecast of what to expect.

A trial begins typically with opening statements by
the lawyers. Open statements, remember, is not evidence
because it comes from the lawyer, but each lawyer is permitted
to stand before you and give you sort of a road map or outline
of what he or she thinks the evidence is going to be so you
will hear from the lawyers first.

Once the opening statements are completed, then the
plaintiff begins the presentation of evidence. Plaintiff will
call their witnesses first. Mr. Fridegotto will examine the
witnesses on direct examination and then they will be
cross-examined by defense counsel, Ms. Fridegotto, and we will
go through all the plaintiffs' witnesses until they have
completed their case.

At that point the defense will have an opportunity to
present its case and tables will turn, Ms. Fridegotto will call
witnesses examining them on direct exam and Mr. Goldberg, as

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1 plaintiffs' counsel, will cross-examine them.

2 Once all the evidence is complete, I will give you
3 those final instructions that I alluded to on the law, you will
4 hear arguments of counsel and the case will be to you.

5 That's what to expect in the upcoming days.

6 For now we are at the very forefront of the trial
7 process. You are about to hear opening statements from
8 counsel.

9 Mr. Goldberg, you may make your opening statements.

10 MR. GOLDBERG: I would like to start by thanking all
11 of you for serving as jurors.

12 I echo what the judge said earlier, that jury service
13 is very important and we understand that it is taking out of
14 your busy lives to be here and the parties will do their best
15 to put on their case as expeditiously as we can and I do thank
16 you again.

17 My name is Kenneth Goldberg. I'm an attorney, and
18 I'm here today with an attorney from my office, Jonathan
19 Margolis, and my two clients.

20 I wanted to reintroduce them to you as you will be
21 hearing from them testify.

22 This is Beatrice Veerman, she is one of the plaintiffs
23 in the case.

24 The other plaintiff is Khadijetou Ba.

25 This is a sexual harassment case. It's a case about

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Goldberg - opening

1 two former employees of a restaurant.

2 Let me make sure that I prefaced my comments by
3 telling you, I'm not a witness, I'm giving you what the judge
4 just described as a road map of the case from our perspective,
5 the plaintiffs' perspective. I get two chances to speak to you
6 directly, this one, my opening statement, and then at the end
7 of the case when I give a summation.

8 My clients, Ms. Veerman and Ms. Ba, worked at Opia
9 Restaurant. It's an upscale restaurant in midtown Manhattan.

10 The restaurant was managed by two of the defendants
11 sitting at that table, Mr. Blech is on the right and Mr. Lesort
12 is to the left. Opia is owned by an entity named Deep Blue
13 Group so they are a defendant. The name on the outside is
14 Opia. The paychecks are Deep Blue Group. That's why they are
15 defendants in the case.

16 Mr. Blech and Mr. Lesort are defendants as well,
17 because my clients I intend to prove you to you that those two
18 gentleman sexually harassed them. That's why they are here.
19 That's what they stand accused of. As I had said before, this
20 is a sexual harassment case.

21 There are some other claims which I will outline for
22 you as well, but will certainly a large part of what you are
23 going to hear about are the allegations of sexual harassment.

24 As for Ms. Ba, who is going to testify this afternoon,
25 she is going to tell you her story, why she went to Opia, what

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Goldberg - opening

1 happened there, how she left her job.

2 She alleges that she was terminated from Opia because
3 she rejected and complained about the sexual advances of Mr.
4 Blech, who is sitting at that table.

5 She also says she lost her job because she was deemed
6 to be too dark by Mr. Lesort, one of the co-owners.

7 She also says that she lost her job because she did
8 not give Opia back about \$600, actually, \$569, when a table
9 left a restaurant without signing the credit card slip and she
10 served that party and she had given them the credit card slip
11 and they left the restaurant without signing it, and we say
12 that that breaks the law to fire her for not giving back the
13 restaurant that \$569.

14 Ms. Veerman says, and she is going to testify, that
15 she was sexually harassed by Mr. Lesort, that she rejected his
16 advances, complained about it and ultimately she lost her job.
17 She lost her job less than a month after she forcefully
18 rejected one of his advances to her and made it crystal clear
19 that it was enough, enough is enough. That's the gist of what
20 she communicated.

21 The reason that the restaurant gave for these two
22 ladies leaving we suspect -- I can't tell you what they are
23 going to say until they get up on the witness stand -- we
24 expect them to say Ms. Ba wasn't fired, that she just left the
25 restaurant because she was not happy about the dispute about

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Goldberg - opening

1 the customer's credit card slip. We submit to you the evidence
2 will show why would Ms. Ba walk out of a job to become
3 unemployed over a credit card slip if she wasn't being asked to
4 pay it.

5 As for Ms. Veerman, we expect the defendants to say,
6 well, you missed a shift and we suspended you and you just
7 never came back.

8 When you hear from Ms. Veerman and you see the
9 documentation, we submit to you that the story that you are
10 going to see is that Ms. Veerman didn't know she was on the
11 schedule. When she found out she rushed to work. She wasn't
12 allowed to work. She came in the next day, worked the shift
13 for somebody else. She was then fired and told Mr. Lesort
14 doesn't want to deal with you anymore.

15 Ms. Veerman was not suspended. If she was suspended,
16 where is the work schedule that puts her back on a shift? We
17 are going to show you work schedules, work schedules after she
18 was let go. Her name is nowhere to be found. She was not on
19 the work schedule because she wasn't suspended she was fired.
20 She had no job waiting for her. She had no reason to walk away
21 from the job.

22 In fact, my two clients went to Opia because they were
23 looking to support themselves. Ms. Veerman, as you will hear,
24 worked at Opia because she was supporting herself as she was
25 going through nursing school.